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Friday
August 14, 1992

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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

Contents

Federal Register

Vol. 57, No. 158

Friday, August 14, 1992

ACTION
NOTICES
Agency information collection activities under OMB review, 36633

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
New England et al., 36609
Mushroom promotion, research, and consumer information order, 36610

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Farmers Home Administration
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Harry S Truman Animal Import Center; importation procedures; application period and lottery, 36633

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
American National Red Cross (ANRC) and national human immunodeficiency virus (HIV)/AIDS information and education prevention program, 36651

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 36640

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Hong Kong, 36638
Textile consultation; review of trade:
Qatar, 36639

Customs Service
NOTICES
China; importation of convict-made goods, 36688

Education Department
RULES
Special education and rehabilitative services:
State vocational and applied technology education programs and national discretionary programs of vocational education; activities and awards criteria, 36720
PROPOSED RULES
Special education and rehabilitative services:
Centers for independent living program, 36617
NOTICES
Meetings:
National Assessment Governing Board, 36641

Employment and Training Administration
NOTICES
Adjustment assistance:
Ansewn Shoe Co. et al., 36674
Bull Printing Systems (BPS), 36675
Conoco, Inc., et al., 36675
John E. Chance & Associates, Inc., 36676
Quarles Drilling Corp., 36676
Supreme Well Service Co., 36676

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 36676

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Competitive program opportunity notices; maximizing economic productibility of oil from shelf carbonate (Class II) reservoirs, 36641
Grant and cooperative agreement awards:
Clark Atlanta University, 36642
Pittsburgh University, 36642

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
New Hampshire, 36603
PROPOSED RULES
Hazardous waste:
Identification and listing—
Toxicity characteristics, 36866
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 36646
Weekly receipts, 36647

Executive Office of the President
See Presidential Documents

Farmers Home Administration
RULES
Loan and grant programs:
Elimination of loan cost payments through the "MISPAY" accounting system at the National Finance Center, 36589

Federal Aviation Administration
RULES
VOR Federal airways, 36601
PROPOSED RULES
Airworthiness directives:
British Aerospace, 36614
Control zones, 36616
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 36686

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 36648

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Arkansas, 36648

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Pennsylvania Power & Light Co. et al., 36643
Hydroelectric applications, 36643
Natural gas certificate filings:
United Gas Pipe Line Co. et al., 36644
Applications, hearings, determinations, etc.:
Natural Gas Pipeline Co. of America, 36645
Pacific Interstate Offshore Co., 36646
Pacific Offshore Pipeline Co., 36646
Universal Resources Corp., 36646

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 36690

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Expedited Funds Availability Act; implementation—
Next day and second day availability checks; extension of holds on exception basis and one-time notices of exception, 36593
Nonproprietary automated teller machines (ATMs); deposit availability schedules, 36599
NOTICES
Federal Open Market Committee:
Domestic policy directives, 36648
Applications, hearings, determinations, etc.:
Allied Irish Banks, p.l.c., et al., 36649
Carolina First Corp. et al., 36649
Frances Gourley Lott Trust et al., 36650
NBD Bancorp, Inc., et al., 36650

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Grizzly bear, 36667
White bladderpod, 36668
Hawaii area draft maps; coastal barrier resources system, 36668

Food and Drug Administration
PROPOSED RULES
Public information:
New product approval, confidential commercial information; disclosure to foreign governments, 36617
NOTICES
Meetings:
Industry information exchange, 36653

Forest Service
PROPOSED RULES
Land uses:
Occupancy of forest system, 36618

Health and Human Services Department
See Centers for Disease Control
See Food and Drug Administration
See Health Resources and Services Administration
See Public Health Service

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Alzheimer's disease or related disorders demonstration projects, 36653
Meetings; advisory committees:
September, 36655

Historic Preservation, Advisory Council
NOTICES
Senior Executive Service:
Performance Review Board; membership, 36633

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 36655
Supplemental assistance program, 36870

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Procedure and administration:
Tax overpayment reduction by amount of past-due legally enforceable debt owed to Federal agency
Correction, 36691

International Trade Administration
NOTICES
Countervailing duties:
Acetylsalicylic acid (aspirin) from Turkey, 36634
Carbon steel wire rod from—
Zimbabwe, 36634
Applications, hearings, determinations, etc.:
University of—
California, 36635

Interstate Commerce Commission
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Western Motor Tariff Bureau, Inc., 36672
Railroad operation, acquisition, construction, etc.:
Blackstone Capital Partners L.P. et al., 36672
Burlington Northern Railroad Co., 36673
Railroad services abandonment:
Chicago & North Western Transportation Co., 36673

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities under OMB review, 36673

Land Management Bureau
NOTICES
Meetings:
Northern Alaska Advisory Council, 36665
Realty actions; sales, leases, etc.:
Alaska, 36665
Arizona; correction, 36666
Resource management plans, etc.:
Yakima Firing Center, WA, 36666
Withdrawal and reservation of lands:
Oregon, 36666

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 36678

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Mercedes-Benz, 36686

National Institute of Standards and Technology
NOTICES
Grants and cooperative agreements; availability, etc.:
Material science and engineering laboratory; ceramics et al., 36635
Inventions, Government-owned; availability for licensing, 36636

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 36607, 36608
PROPOSED RULES
Endangered and threatened species:
Sacramento River winter-run chinook salmon; critical habitat designation, 36626
NOTICES
Fishery conservation and management:
Western Pacific—
Pelagic, 36637
Meetings:
Mid-Atlantic Fishery Management Council, 36638

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 36671

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
General Electric Stockholders' Alliance et al., 36611
NOTICES
Alternative means of dispute resolution; policy statement, 36678
Analog safety systems replacement with digital safety systems; procedures and policies, 36680
Meetings:
Performance Demonstration Initiative; activities update, 36681
Nuclear Regulatory Commission public meetings/hearings; security support procedures; revision, 36681

Occupational Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 36690

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 36603
Single-employer plans:
Valuation of plan benefits in single-employer plans—
Adopting additional PBGC rates; amendments, 36602

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—
Update, 36681

Presidential Documents
ADMINISTRATIVE ORDERS
Haitian refugee assistance (Presidential Determination No. 92-37 of August 3), 36587

Public Health Service
See Centers for Disease Control
See Food and Drug Administration
See Health Resources and Services Administration
PROPOSED RULES
Vaccine injury compensation:
Vaccine injury table, 36878
NOTICES
Organization, functions, and authority delegations:
Social Security Administration, 36655

Reclamation Bureau
NOTICES
Strategic plan; availability, 36667

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Intermediate bulk containers, 36694

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Arapahoe Meadows, Co., 36683

Small Business Administration
NOTICES
Intergovernmental review of agency programs and activities, 36683

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 36685
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 36686

Treasury Department
See Customs Service
See Internal Revenue Service

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Convivencia: Jews, Muslims, and Christians in Medieval Spain, 36688
Magritte, 36689

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 36694

Part III
Department of Education, 36720

Part IV
Environmental Protection Agency, 36866

Part V
Department of Housing and Urban Development, 36870

Part VI
Department of Health and Human Services, Public Health Service, 36878

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 92-37 of August 3, 1992 36587

7 CFR

1806 36589
1863 36589
1925 36589
1944 36589
1945 36589
1951 36589
1955 36589
1962 36589
1965 36589

Proposed Rules:

1001 36609
1002 36609
1004 36609
1005 36609
1007 36609
1011 36609
1030 36609
1033 36609
1036 36609
1040 36609
1044 36609
1046 36609
1049 36609
1065 36609
1068 36609
1079 36609
1093 36609
1094 36609
1096 36609
1097 36609
1098 36609
1099 36609
1106 36609
1108 36609
1124 36609
1126 36609
1131 36609
1135 36609
1138 36609
1209 36610

10 CFR

Proposed Rules:

20 36611

12 CFR

229 (2 documents) 36593, 36599

14 CFR

71 36601

Proposed Rules:

39 36614
71 36616

21 CFR

Proposed Rules:

20 36617

26 CFR

301 36691

29 CFR

2619 36602
2676 36603

34 CFR

400 36720
401 36720
402 36720
403 36720
405 36720
406 36720
407 36720
408 36720
409 36720
410 36720
411 36720
412 36720
413 36720
414 36720
415 36720
416 36720
417 36720
418 36720
419 36720
421 36720
422 36720
423 36720
424 36720
425 36720
426 36720
427 36720
428 36720

Proposed Rules:

366 36617

36 CFR

Proposed Rules:

251 36618

40 CFR

52 36603

Proposed Rules:

261 36866

42 CFR

Proposed Rules:

100 36878

49 CFR

Proposed Rules:

171 36694
172 36694
173 36694
178 36694
180 36694

50 CFR

661 (2 documents) 36607, 36608

Proposed Rules:

226 36626

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

Presidential Documents

Title 3—

The President

Presidential Determination No. 92–37 of August 3, 1992

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate Haitian refugee applicants as qualifying for assistance under section 2(b)(2) of that Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 3, 1992.

[FR Doc. 92–19546
Filed 8–12–92; 3:21 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1806, 1863, 1925, 1944, 1945, 1951, 1955, 1962, and 1965

Elimination of Loan Cost Payments Through the "MISPAY" Accounting System at the National Finance Center

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the internal processing of loan cost items through the "MISPAY" accounting system at the National Finance Center. The intended outcome of this action is to reduce confusion in the field offices, by simplifying the process of paying administrative costs related to loans.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Tony Bainbridge, Operating Accountant, Administrative and Program Control Section, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone FTS 262–6349 or commercial (314) 539–6349.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

Discussion

Specifically, the regulations are revised due to the fact that Form FmHA 2024–1, "Miscellaneous Payment System," will no longer be used. The Form AD–838, "Purchase Order," and Form FmHA 838–B, "Invoice-Receipt Certification," will be used in place of the Form FmHA 2024–1 for the purpose of paying administrative costs. Also, references to Standard Form (SF) 1034, "Public Voucher for Purchases and Services Other Than Personal," and SF 1143, "Advertising Order," are being removed since these documents are no longer required as supporting documentation.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under the following numbers:

10.404 Emergency Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.422 Business and Industrial Loans
10.423 Community Facilities Loans

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V, (48 FR 29115, June 24, 1983) this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

List of Subjects

7 CFR Part 1806

Insurance, Loan programs—Agriculture, Real property insurance, Rural areas.

7 CFR Part 1925

Real property taxes, Taxes.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

7 CFR Part 1951

Accounting servicing, Credit, Debt restructuring, Grant program—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Reporting requirements, Rural areas.

7 CFR Part 1955

Government acquired property, Government property management, Sale of Government acquired property, Surplus Government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PARTS 1944, 1951, 1955, 1965—[AMENDED]

1. The authority citations for the following parts are revised to read as follows:

Part 1944—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Part 1951—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. The authority citations for the following parts continue to read as follows:

Part 1955—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Part 1965—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

CHAPTER XVIII—[AMENDED]

3. 7 CFR Chapter XVIII is amended by changing the reference from "FmHA Instruction 2024–P" to "FmHA Instruction 2024–A" in the following places:

(a) Part 1944, subpart E, § 1944.235(f)(1).

(b) Part 1951, subpart E, § 1951.230(d)(l)(i).

(c) Part 1955, subpart A, § 1955.5(d).

PART 1806—[AMENDED]

4. The authority citation for part 1806 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Real Property Insurance

5. Section 1806.4 is amended by revising the last two sentences in paragraph (b)(l) to read as follows:

§ 1806.4 Examining and general servicing of insurance.

* * * * *

(b) * * *

(1) * * * In any case where there is an additional premium due because of vacancy, unoccupancy, tenant occupancy, or other increased hazard, and upon demand to FmHA from the company or agent because the borrower cannot, or will not, pay the additional premium, it may be paid in accordance with FmHA Instruction 2024–A, to the company or agent. For FP and section 502 RH borrowers, property insurance will not be obtained except in cases where an unusual and severe hazard exists and insurance is necessary to protect the interests of the Government.

* * * * *

6. Section 1806.6 is amended by revising the first sentence in paragraph (a)(1)(v) and the second sentence in paragraph (c)(2) to read as follows:

§ 1806.6 Failure of borrower to provide insurance.

* * * * *

(a) * * *

(1) * * *

(v) If the borrower refuses to pay the insurance premium with his own funds or arrange with the agent for subsequent payment by premium not or otherwise, the County Supervisor will pay the amount of the insurance premium in accordance with FmHA Instruction 2024–A. * * *

* * * * *

(c) * * *

(2) * * * The County Supervisor will, in accordance with FmHA Instruction 2024–A, pay the amount of the premium for a period of one year. * * *

* * * * *

PART 1863—REAL ESTATE TAX SERVICING [REMOVED]

7. Part 1863 is removed and reserved.

PART 1925—[ADDED]

8. Part 1925 is added to read as follows:

PART 1925—TAXES

Subpart A—Real Estate Tax Servicing

Sec.

1925.1 General.
1925.2 Definition of tax.
1925.3 Servicing taxes.
1925.4 Servicing delinquent taxes.
1925.5–1925.50 [Reserved]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Real Estate Tax Servicing

§ 1925.1 General.

This Instruction applies to borrowers with a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Labor Housing (LH), Softwood Timber (ST), and Non-Program (NP) loans secured by real estate. It also applies to section 502 and section 504 Rural Housing borrowers (Single Family Housing (SFH)) who also have a Farmer Program loan. It does not apply to borrowers who have a SFH loan only; those will be serviced under § 1965.105 of Subpart C of Part 1965 of this chapter. Borrowers are responsible for paying taxes on the real estate security to the proper taxing authorities before taxes become delinquent. This obligation is set forth in the security instrument securing the loan.

§ 1925.2 Definition of tax.

For the purpose of this instruction, the word "tax" means all taxes, assessments, levies, irrigation and water charges or other similar obligations which are or will, on nonpayment, become a lien upon the real estate prior to the mortgage securing the Farmers Home Administration (FmHA) loan.

§ 1925.3 Servicing taxes.

(a) The County Supervisor will be responsible for ascertaining that all mortgaged real estate is listed properly for tax purposes.

(b) The County Supervisor will be responsible for taking all actions in connection with taxes as may be necessary to protect the Government's security interests. Any unusual situations that may arise with respect to tax servicing should be referred to the State Office for consideration.

(c) The County Supervisor will encourage each borrower to pay taxes promptly in order to avoid any penalties. Normally, this can be accomplished through routine servicing of loans by emphasizing the advantages of setting aside sufficient income to meet tax obligations when they become due. Taxes will be adequately budgeted for those borrowers with whom Form FmHA 431–2, "Farm and Home Plan," is developed. Each borrower will be encouraged to notify the County Supervisor when he has paid his taxes. After the delinquent date, it will be necessary for the County Supervisor to determine the borrowers whose taxes are delinquent. Forms FmHA 1905–1, "Management System Card-Individual," FmHA 1905–5, "Management System Card- Individual (Rural Housing Only)," and FmHA 1905–10, "Management System Card-Association," will be used in posting servicing action on delinquent taxes.

§ 1925.4 Servicing delinquent taxes.

(a) The County Supervisor will contact each borrower with a delinquent tax and make every practical effort to have him pay the tax with his own funds. He will use the Management System Card for follow-up of delinquent taxes. If the delinquent tax is not paid and the borrower comes to the office with proceeds for application on the FmHA account secured by the real estate, the County Office personnel will endeavor to get the borrower to use the

proceeds to pay the delinquent tax. If the amount of the delinquent tax is less than the amount of the proposed payment, the difference will be applied on the FmHA account in accordance with the policy outlined in FmHA Instructions 1951–A and 1951–G.

(b) Prior (usually about 90 days) to the time it is legally possible for action to be taken that will cause the borrower to lose title or right of possessions of the security property or the use of essential water, the County Supervisor will contact the borrower and definitely determine if he will pay the delinquent tax immediately. If the borrower is unable or unwilling to pay the delinquent tax with his own funds after every appropriate effort has been made to have him do so, the County Supervisor will refer to FmHA Instruction 2024–A and utilize the Type 60 Purchase Order System to pay the amount of the delinquent taxes plus the amount of any accrued penalty to bring taxes current.

(1) In an exceptional case where reasons for delinquent taxes have been removed and planned income during the next year covers payment of current obligations plus delinquent taxes not vouchered, only the delinquent taxes will be paid that could cause the borrower to lose title or right of possession of security property.

(2) If the Government is holding a mortgage other than a first mortgage on the property, do not initiate payment request until the County Supervisor has determined that (i) the prior lien holder will not pay the delinquent tax, (ii) the Government's security will be jeopardized if the delinquent tax is not paid, and (iii) the value of the security is sufficient to justify the advance.

§§ 1925.5–1925.50 [Reserved]

PART 1945—EMERGENCY

9. The authority citation for part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

10. Section 1945.135 is revised to read as follows:

§ 1945.135 Loan Servicing.

Loans will be serviced under part 1806 (FmHA Instruction 426.1), and Subpart A of parts 1925, 1962 and 1965 of this chapter.

PART 1951—[AMENDED]

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

11. Section 1951.220 is amended by revising paragraph (d) to read as follows:

§ 1951.220 General servicing actions.

* * * * *

(d) *Property taxes.* Real property taxes are serviced according to Subpart A of part 1925 of this chapter. If State statutes permit a personal property tax lien to have priority over FmHA's lien, such taxes are serviced according to §§ 1925.3 and 1925.4 of subpart A of part 1925 of this chapter.

* * * * *

§ 1951.227 [Amended]

12. Section 1951.227 (c) is amended by changing the reference from "FmHA Instruction 2024–A and 2024–P" to "FmHA Instruction 2024–A".

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.514 [Amended]

13. Section 1951.514 is amended by changing the reference from "Subpart P of Part 2024" to "FmHA Instruction 2024–A".

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.911 [Amended]

14. Section 1951.911(b)(6)(ii) is amended in the second sentence by changing the reference from "§ 2024.753(c) of FmHA Instruction 2024–P" to "FmHA Instruction 2024–A".

15. Exhibit H of subpart S is amended by revising the last sentence in paragraphs (VII)(C) and (VII)(H) to read as follows:

Exhibit H of Subpart S—Primary Loan Service Programs (Farm Debt Restructure and Conservation Easements)

* * * * *

(VII) * * *

(C) * * * Title opinion costs will be considered nonrecoverable costs and will be paid in accordance with FmHA Instruction 2024–A (Instructions and forms are available in any FmHA Office).

* * * * *

(H) * * * Cost of recording the easement will be considered a nonrecoverable cost and will be paid by FmHA in accordance with FmHA Instruction 2024–A (Instructions and forms are available in any FmHA Office).

* * * * *

PART 1955—[AMENDED]

16. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management of Property

17. Section 1955.55 is amended by revising the last sentence in paragraph (e) to read as follows:

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

* * * * *

(e) * * * Costs will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

§ 1955.55 [Amended]

18. In § 1955.55, paragraph (f)(1)(ii) is amended by changing the word "not" to "no".

19. In § 1955.65, paragraph (c)(1) is amended in the last sentence by removing the words "Exhibit J, paragraph II C, 'Procurement Preference Program,' of" and by changing the reference from "FmHA Instruction 2024–A" to "FmHA Instruction 2024–Q"; and paragraph (c)(4) is revised to read as follows:

§ 1955.65 Management of inventory and/or custodial real property.

* * * * *

(c) * * *

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA Instruction 2024–A (available in any FmHA office). For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager in accordance with FmHA Instruction 2024–A (available in any FmHA Office).

* * * * *

20. Section 1955.67 is amended by revising the second sentence in the introductory text of paragraph (a) and the last sentence in paragraph (b) to read as follows:

§ 1955.67 Payment of liens.

(a) * * * Payment will be made according to FmHA Instruction 2024–A (available in any FmHA office). * * *

* * * * *

(b) * * * The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and request payment to the lienholder in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) which will be charged to the inventory account as a nonrecoverable cost.

21. Section 1955.68 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 1955.68 Payment of taxes.

* * * * *

(a) *Suitable or program property.* When property is suited for program purposes, the payment of taxes will be paid in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) charging them as nonrecoverable costs to the inventory account. * * *

* * * * *

22. Section 1955.69 is amended by revising the last sentence in paragraph (a) as follows:

§ 1955.69 Insurance.

* * * * *

(a) * * * Premiums will be paid in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) and charged to the inventory account as a nonrecoverable cost.

* * * * *

Subpart C—Disposal of Inventory Property

23. Section 1955.108 is amended by revising paragraph (d)(3) to read as follows:

§ 1955.108 Sale of surplus property (CONACT).

* * * * *

(d) * * *

(3) Advertising will be ordered in accordance with FmHA Instruction 2024–A (available in any FmHA Office).

* * * * *

§ 1955.139 [Amended]

24. Section 1955.139 (c)(2)(v) is amended by changing the reference from "§ 1955.137 (e)" to "§ 1955.137(a)".

25. Section 1955.141 is amended by revising the last sentence in paragraph (a) to read as follows:

§ 1955.141 Transferring title.

(a) * * * Any FmHA expenses involved will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA Office).

* * * * *

PART 1962—[AMENDED]

26. The authority citation for part 1962 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

27. In § 1962.29, paragraph (a)(1) is amended by removing the words "and 2075–A" and by revising the introductory text of paragraph (b) to read as follows:

§ 1962.29 Payment of fees and insurance premiums.

* * * * *

(b) *Insurance premiums.* County Supervisors are authorized to voucher for the payment of bills for insurance premiums on chattel security, in accordance with FmHA Instruction 2024–A (available in any FmHA Office). Bills may be paid when:

* * * * *

28. Section 1962.40 is amended by revising paragraph (e)(4) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(e) * * *

(4) Costs incurred by FmHA in protecting its interest in security or EO property may be paid in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) and may be charged to the borrower's loan account, or paid from proceeds of the sale of security or EO property.

* * * * *

29. In § 1962.42, paragraph (b)(1) is amended by changing the references from "FmHA Instruction 1955–D" to "FmHA Instruction 1955–B" and "Form FmHA 120–10, 'Solicitation, Quotation, Purchase Order, Inspection and Invoice' " to "Form AD–838, 'Purchase Order' ", by changing the reference from "Form FmHA 120–10" to "Form AD–838" in paragraphs (b)(2) and (b)(3), and by revising the last sentence in paragraph (a)(1)(v) and the first sentence in paragraph (c)(7) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) * * *

(1) * * *

(v) * * * When prior liens are paid, the payment will be made in accordance with FmHA Instruction 2024–A (available in any FmHA Office) and charged to the borrower's account.

* * * * *

(c) * * *

(7) If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44(b) of this subpart or to pay lienholders, such costs or prior liens will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * *

* * * * *

PART 1965—[AMENDED]

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.3 [Amended]

30. Section 1965.3 is amended by changing the reference from "Part 1863 of this chapter (FmHA Instruction 425.1)" to "Subpart A of Part 1925 of this chapter".

31. Section 1965.11 is amended by revising the second sentence in the introductory text of paragraph (b) and paragraph (b)(3) to read as follows:

§ 1965.11 Preservation of security and protection of liens.

* * * * *

(b) * * * Any advances made for the following purposes will be considered protective advances and will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * *

* * * * *

(3) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with Subpart A of Part 1925 of this chapter.

* * * * *

Subpart B—Security Servicing for Multiple Housing Loans

32. Section 1965.75 is amended by revising the last sentence in paragraph (c)(2) to read as follows:

§ 1965.75 Abandonment.

* * * * *

(c) * * *

(2) * * * The fees will be paid on a monthly basis in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

Subpart C—Security Servicing for Single Family Rural Housing Loans

33. Section 1965.104 is amended by revising the last sentence in the

introductory text of paragraph (b) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(b) * * * FmHA Instruction 2024–A must be followed for payment to be charged to the borrower's account as recoverable costs. Advances are authorized for:

* * * * *

(c) * * *

(1) * * *

(ii) * * * If payment by voucher is not acceptable, the procedures outlined in FmHA Instruction 2024–A (available in any FmHA Office) must be followed and the applicable forms prepared and submitted in time to receive a check before the sale date.

* * * * *

Dated: July 8, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–19250 Filed 8–13–92; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R–0744; Regulation CC]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form, with minor modifications, its interim rule amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments allow banks to extend holds, on an exception basis, to "next-day" and "second-day" availability checks and allow one-time notices of exception holds in certain cases. The amendments should benefit and reduce costs for all banks that choose to take advantage of the rule changes.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System. For information regarding modifications to Model Forms or appendix C, contact Jane E. Ahrens, Staff Attorney (202/452–3667), or Dale I. Nishimura, Staff Attorney (202/452–2412), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, section 225, 105 stat. 2236 (1991)) amended the provisions in section 604 of the Expedited Funds Availability Act (Act) (12 U.S.C. 4003) regarding safeguard exceptions to the availability schedules, effective December 19, 1991. The Board adopted interim amendments to Regulation CC (12 CFR part 229), effective January 15, 1992, to conform the regulation to the amendments to the Act (57 FR 3277, January 29, 1992). The Board has adopted the interim amendments, with technical and clarifying modifications, in final form.[1]

Background

Regulation CC implements the Act and was effective September 1, 1988. Among other things, the regulation establishes availability schedules to limit the holds banks [2] can place on deposits in transaction accounts and requires banks to disclose their funds availability policies to their customers.

As a general matter, the availability of a deposit is linked to the degree of risk associated with the deposit and the amount of time necessary for a bank to learn whether a deposited check will be returned unpaid. Accordingly, nonlocal [3] checks generally must be made available for withdrawal on the fifth business day after deposit, local checks on the second business day, and certain "low-risk" checks, such as government, cashier's, certified, and teller's checks, on the next business day. (Most "next-day" checks, if not deposited in person at a staffed teller facility, must be made available for withdrawal on the second business day after deposit.)

The Act (section 604) and the regulation (§ 229.13) provide for certain safeguard exceptions to the availability schedules. Under these exceptions, the depositary bank may extend the hold on a deposit for a reasonable period of time. The exception holds apply to deposits to new accounts, daily aggregate check deposits in excess of $5,000, checks that have returned unpaid and redeposited, checks deposited into an account that has been repeatedly overdrawn, checks the depositary bank may reasonably expect to be uncollectible, and checks deposited during emergency conditions, such as a computer failure, natural disaster, or other emergency beyond the bank's control.

Applicability of Exception Holds to "Next-Day" and "Second-Day" Checks

Prior to the enactment of the FDICIA, most of the exception holds did not apply to checks that must be accorded next-day or second-day availability under section 603(a)(2) of the Act and § 229.10(c) of the regulation, such as government, cashier's, certified, and teller's checks. In three reports to Congress on the implementation of the Act, the Board expressed concern that the inapplicability of the exception holds to next-day and second-day checks exposed depositary banks to substantial risk that such checks would be returned after the proceeds had been made available for withdrawal.[4] The Board noted that fraud loss reduction would benefit banks as well as their customers, who otherwise may face increased service fees or decreased service levels.

Section 225 of the FDICIA amended section 604 of the Act to authorize the Board to prescribe regulations to apply most of the safeguard exception holds to checks that otherwise would receive next-day or second-day availability. The Board's interim rule allowed banks to apply the exceptions for large deposits (§ 229.13(b)), redeposited checks (§ 229.13(c)), accounts with repeated overdrafts (§ 229.13(d)), and emergency conditions (§ 229.13(f)) to checks otherwise covered by § 229.10(c). In addition, the interim rule made the reasonable cause exception (§ 229.13(e)), which previously had applied to local and nonlocal checks

[1] Section 227 of the FDICIA amends section 603(e) of the Act to eliminate the shorter availability schedules for deposits at nonproprietary ATMs that were to become effective November 28, 1992. Section 212(h) of the FDICIA amends the administrative enforcement provisions in section 610(a) of the Act. The Board proposed amendments to Regulation CC regarding these provisions separately from the interim rule (57 FR 3365, January 29, 1992). The Board has adopted final amendments to Regulation CC to implement these changes (see Docket No. R–0745, elsewhere in today's **Federal Register**).

[2] For purposes of Regulation CC, the term "bank" includes commercial banks, savings institutions, and credit unions.

[3] A check generally is "local" if the bank by which it is payable and to which it is sent for collection ("paying bank") is in the same Federal Reserve check processing region as the bank that receives the check for deposit ("depositary bank").

[4] See, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991, March 1990, and June 1989.

and only certain next-day or second-day checks (i.e., checks drawn on Federal Reserve Banks or Federal Home Loan Banks and cashier's, certified, and teller's checks), available for all checks covered by § 229.10(c).[5] The Board adopted Commentary to the interim rule to reflect the broader scope of the exception holds.

The Board's interim rule also amended § 229.13(h), which governs the availability of deposits subject to the exception holds. The interim rule provided that, with respect to most checks subject to the next-day (or second-day) availability requirement (i.e., Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's checks), the depositary bank may extend the time funds must be made available for withdrawal under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception by a reasonable period. The reasonable period is presumed to be five business days for local checks and six business days for nonlocal checks, unless the depositary bank establishes otherwise. This reasonable period may be added to the availability schedule that would have applied had the checks not been subject to the next-day (or second-day) availability requirement. In other words, the additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank. (Treasury checks and U.S. Postal Service money orders would be considered drawn on local paying banks.) For on us checks that must be afforded next-day availability under § 229.10(c)(1)(vi), the reasonable additional hold is presumed to be one business day, which is added to the next-day requirement.

The Board received 57 comments on the interim rule. Forty-nine of the commenters supported the rule, four opposed its adoption, and four expressed no opinion. The distribution by type of commenter is shown below:

Type	Number
Commercial banks/bank holding companies	26
Savings institutions	8
Credit unions	6
Clearing houses	1
Trade associations	8
Federal Reserve Banks	4
Other	4
Total	57

Thirty-six commenters addressed the applicability of the safeguard exception holds to checks that otherwise would be granted next-day or second-day availability. All but one of these commenters supported the change, generally because of the reduction in risk to depositary banks. Eleven commenters believed that the change would reduce the potential for fraud loss due to the withdrawal of funds made available to depositors before the depositary bank receives notification from the paying bank that checks are being returned. One commenter noted that banks would be able to conserve valuable resources because of the reduction in fraud, and that the customers might benefit if banks no longer needed to increase service fees or reduce service levels to cover fraud-related costs. Another commenter, however, believed the amendment still exposed banks to a certain amount of risk. One commenter believed that banks should not be permitted to impose an exception hold based on "reasonable cause" to doubt the collectibility of the check.

The Board agrees with the majority of the commenters that the interim rule reduces risk for depositary banks. The Board has adopted the interim rule and Commentary applying the safeguard exceptions to next-day and second-day checks as a final rule, with minor technical and clarifying amendments.

One commenter, a mortgage lender, believed that the interim rule calls into question the acceptance of cashier's checks in real estate transactions in states that have "good funds" laws because of the possibility that a large deposit hold could be placed on those checks. (Generally, state "good funds" laws prohibit escrow holders from disbursing funds from an escrow account until the funds are available for withdrawal as a matter of right.) The commenter believed this problem could be avoided if banks were allowed to apply all exception holds except the large deposit exception hold to checks normally afforded next-day or second-day availability. In contrast, a commercial bank commented that the ability to use the large deposit exception would reduce losses to depositary banks associated with the acceptance of cashier's, certified, and teller's checks.

The Board recognizes that the ability of a bank to place an exception hold on the portion of a cashier's or teller's check in excess of $5,000 may delay disbursement of funds from or require earlier prefunding of escrow accounts, unless an alternative form of payment, such as an electronic payment, is used. However, should the check be returned for forgery or another reason, such holds may reduce the risk of loss for the depositary bank and for other parties to the transaction such as the seller, escrow holder, or title insurance company. Despite the possibility that a bank could place holds on cashier's or teller's checks, those types of checks likely would continue to be desirable payment instruments for many types of transactions because (1) it is difficult to stop payment of such checks and (2) when cashier's or teller's checks are taken in payment for an obligation, the obligation is discharged under UCC 3-310(a).[6]

One commenter stated that large deposit exception holds on next-day checks should not apply to U.S. Treasury checks, because the primary risk associated with government checks is the risk of forged indorsements. The depositary bank generally would not learn of the forgery until after the expiration of the exception hold period.

The Board recognizes that the Treasury may return checks with forged indorsements long after the exception hold period has elapsed. However, Treasury checks could be returned for other reasons within a much shorter time frame. For example, stale-dated Treasury checks generally are returned within seven business days of presentment. Thus, the Board believes it is appropriate to retain the exception holds for Treasury checks, as authorized by the Act.

One commenter noted that the interim rule did not apply to new accounts, which are governed by § 229.13(a). Under § 229.13(a), the first $5,000 of most "next-day" and "second-day" checks must be made available on the next or second day after deposit as

[5] The new account exception was not affected by the amendments. The next-day (or second-day, for those checks not deposited at a staffed teller station) availability requirements for Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, certified, and teller's checks continue to apply for the first $5,000 deposited in a new account on any one banking day, with the remainder available on the ninth business day after deposit, as provided in § 229.13(a). The amendments to the Act do not allow extended holds for these types of checks when deposited in new accounts.

[6] In addition, the Board has proposed amendments to its Regulation D (12 CFR part 204), governing reserve requirements, that would classify teller's checks as reservable liabilities. If adopted, the Regulation D amendment could prompt teller's check providers to move to other types of instruments that would not be accorded next-day availability, even for the first $5,000. Thus, use of checks that are neither cashier's nor teller's checks in real estate and other types of transactions could become more prevalent, despite the lack of next-day availability for those checks.

provided in § 229.10(c), and the remainder may be held until the ninth business day after the day of deposit. (This nine-day maximum hold period is mandated by the Act.) The commenter noted that this provision could result, in certain cases, in deposits of "next-day" checks to new accounts becoming available faster than deposits of similar checks to established accounts (assuming a seven or eleven-day hold was placed on a "next-day" check deposited into an established account). The Board acknowledges this inconsistency between the statutory hold period for "next-day" checks deposited in new accounts and the regulatory hold period for "next-day" checks deposited in established accounts. The Board does not have the statutory authority, however, to increase the hold periods for new accounts or to apply the exception holds described in § 229.13 (b) through (f) to new accounts.

One commenter asked whether the reasonable hold period may be added to the calculated availability schedule, which banks may compute for nonconsumer accounts in accordance with § 229.19(d). A bank may add the reasonable hold period to its calculated availability schedule, but should reflect that practice in its disclosures.

One-Time Hold Notices

Prior to the enactment of the FDICIA, section 604(f) of the Act and § 229.13(g) of the regulation provided that each time a depositary bank invoked an exception to the availability schedules under § 229.13 (b) through (f) (the large deposit, redeposited check, repeated overdraft, reasonable cause, and emergency conditions exceptions, respectively), it had to notify the customer of the exception hold. Section 229.13(g) required that the exception hold notice be given at the time of the deposit or by the first business day following the day the facts upon which the exception hold was based became known to the depositary bank.

Although individual notices may be appropriate in the case of the reasonable cause or emergency conditions exceptions, which must be invoked on a case-by-case basis, they are less appropriate for the large deposit, redeposited check, or repeated overdraft exceptions. In these latter cases, it would be more efficient and less costly to depositary banks if the notice requirement could be tailored to the exception invoked. Customers, as well, would benefit from receiving advance notice of any exception holds that the bank would invoke under certain conditions or for a certain period of time, rather than receiving on-the-spot or after-the-fact notices upon each deposit. In its three reports to Congress regarding implementation of the Act, cited above, the Board recommended that the Act be amended to provide banks with greater flexibility in giving notices of exception holds.

Section 225 of the FDICIA amends section 604(f) of the Act to authorize the Board to prescribe regulations to allow the depositary bank, in certain cases, to send one notice of an exception hold applicable to a customer's future deposits rather than sending a separate notice for each deposit. The amendments to section 604(f) set out two types of one-time notices and the circumstances under which they apply, as follows:

1. Large Deposit and Redeposited Check Exception Hold Notices

Sections 229.13 (b) and (c) of the regulation provide that a depositary bank may apply exception holds to aggregate daily deposits of checks in excess of $5,000 and to deposits of checks that have been returned unpaid and redeposited. Under the amendments to section 604(f) of the Act, if a depositary bank applies the large deposit or redeposited check exception to nonconsumer accounts, it may give its nonconsumer customers a single notice at or prior to the time notice otherwise must be given. The Board's interim amendments to § 229.13(g) and revisions to the Commentary implemented these amendments to the Act.

As provided in the interim amendments to § 229.13(g)(2), the one-time notice for the large deposit and redeposited check exceptions must explain the reason the exception(s) may be invoked and the time period within which deposits subject to the exception(s) would be available for withdrawal. The notice should reflect the bank's priorities in placing exception holds on deposits consisting of different types of checks, such as next-day, local, and nonlocal checks.

A depositary bank may provide a one-time notice to a nonconsumer customer under § 229.13(g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. The Board adopted Model Notice C–13B, which may be used by those banks that want to provide a one-time notice of these exception holds to their nonconsumer customers. Alternatively, a depositary bank may choose to send hold notices for each individual deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–13).

2. Repeated Overdraft Exception Hold Notice

Section 229.13(d) of the regulation provides that a depositary bank may, for a six-month period, apply longer holds to deposits to an account that has been repeatedly overdrawn. Under § 229.13(d), an account is repeatedly overdrawn if it is overdrawn on six or more banking days, or is overdrawn by $5,000 or more on two or more banking days, within the preceding six months.

Section 229.13(g) of the regulation originally provided that, when invoking the repeated overdraft exception, a depositary bank must provide a notice to the customer upon each deposit. Act, if an account (either consumer or nonconsumer) is subject to the repeated overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply, rather than giving a notice upon each deposit during that time period. The Board adopted interim amendments to § 229.13(g) and revisions to the Commentary to implement the amendments to the Act.

Section 229.13(g)(3) of the interim amendment provides that the one-time repeated overdraft notice must state the customer's account number, the fact that the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply. A depositary bank may provide a one-time notice to a customer under § 229.13(g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account. A depositary bank may send a notice, such as that contained in Model Notice C–13C, to its customer at the start of each period for which the repeated overdraft exception will be in effect.

Twenty-four commenters addressed the concept of one-time notices. Fourteen commenters supported the amendments as a means to improve the efficiency of and reduce costs to banks. Three of these commenters stated that customers would also benefit by receiving advance notice of exception holds, rather than receiving notification at the time of deposit, or later. Several other commenters stated that, although one-time notices would not necessarily be more cost effective than an individual notice of each hold or be useful to their own operations, they supported the option as a means of providing flexibility to banks. Other

commenters noted that the proposed procedure was onerous and that some clarification was necessary. One commenter suggested that banks that give customers individual notice of each hold should receive consideration in the form of simplified hold criteria. One other commenter opposed the option of one-time notices because it would not reduce losses.

The Board believes that the one-time notices provide flexibility to banks and may reduce the cost of providing hold notices in certain cases. The Board has adopted the interim rule and Commentary provisions relating to one-time notices, with minor technical and clarifying amendments.

One commenter suggested that the Board revise § 229.16(c) of Regulation CC to clarify the applicability of the one-time exception hold notice for banks with a case-by-case hold policy. The Board has amended the Commentary to § 229.16(c) (1) and (3) to clarify that depository banks that use case-by-case disclosure policies may use the one-time notice provisions of § 229.13(g) (2) and (3) and that the provisions of § 229.16(c)(3) regarding overdraft and returned check fees apply only to case-by-case notices provided pursuant to § 229.16(c)(2).

Twenty commenters discussed the amendment allowing one-time notices to nonconsumer customers of exception holds on large deposits and redeposited checks. One commenter favored these one-time notices because the notice could be incorporated into the bank's initial disclosure provided to the customer when an account is opened. Another commenter stated that the option would not be of use to community banks, but that larger banks might find the option useful. A commercial bank commenter indicated that it would continue to apply exception holds using individual notices, as it does not invoke the holds on most deposits. Further, this commenter noted that most of the holds invoked for large deposits and redeposited checks were on consumer accounts, rather than nonconsumer accounts. Another commercial bank commenter stated that larger business customers that routinely make aggregate daily deposits in excess of $5,000 and retailers that redeposit a significant number of checks usually have well-established relationships with their banks and generally do not have exception holds placed on their accounts.

One commenter suggested that the § 229.13(g)(2) one-time notice should include the account number of the depositor. This commenter noted that businesses may have multiple accounts and this information would help the bank to identify the account to which the hold applies. Banks may include the account number in the one-time notice, but the Board has not required that they do so. Requiring the customer's account number on each notice would force banks to individualize each notice, thereby precluding such a notice from being part of an initial policy disclosure given to all customers.

Several commenters believed that the interim rule needed additional clarification. For example, a commenter recommended that the rule state clearly that a one-time notice may be sent out on an individual account basis. Several commenters requested further clarification of the terms "most check deposits," "generally available," "consumer account," and "nonconsumer account." The Board believes that the § 229.13(g) regulatory and Commentary language clearly indicates that the one-time notice may be applied on an account-by-account basis. The Board also believes that banks may rely on the plain meaning of the terms "most check deposits" and "generally available" and that further detail is unnecessary. The Board has amended the Commentary to the definition of "consumer account" to clarify that any account that does not meet the consumer account definition is a nonconsumer account and to add cross-references.

One commenter believed that a bank may have difficulty issuing one-time notices if the bank aggregates deposits to multiple accounts as permitted by § 229.13(b). The commenter noted that the depositing customer may not be the sole holder of the accounts and the other holders of the accounts may not all be the same. The commenter recommended that the final regulation specify that a bank may place applicable holds on all accounts after giving the one-time notice to one of the account holders. Although a bank may aggregate deposits to different accounts for purposes of meeting the $5,000 large deposit threshold, under § 229.13(g)(2) one-time notices must be provided for each nonconsumer account on which large deposit holds will be placed. Thus, banks should send one-time notices to the address associated with each nonconsumer account on which a hold will be placed, rather than to a single common account-holder.

The same commenter noted that redeposits by the bank are easier to track operationally than redeposits by the customer. Therefore, the requirement that "the exception hold be invoked for most check deposits to which the exception could apply" should apply separately to redeposits by the depositary bank and redeposits by the customer. The commenter did not believe that this would require any change to the wording of Model Notice C–13B. Although a bank is free to apply the one-time exception notice to a specific subset of redeposited checks, such as those automatically redeposited by the bank under an agreement with its customer, the specific subset of checks should be described in the one-time notice. For example, Model Form 13–B describes only "checks that have been returned unpaid;" a bank that wishes to use the one-time notice for only a subset of returned checks should elaborate on that description.

One commenter asked whether the one-time notice for large deposits and redeposited checks is valid for the entire life of the account. Neither the statute nor the regulation specify an expiration period for the one-time notice described in § 229.13(g)(2).

Fourteen commenters discussed the provision for a one-time repeated overdraft exception notice. Twelve commenters supported the provision, citing cost savings, reduced notification burden, and reduced exposure to loss from accounts with repeated overdrafts. Three of these commenters supported the option, although they did not believe they would use one-time notices. Another commenter indicated that the change would be of no benefit to banks that are not capable of invoking holds on a widespread, automated basis.

Several commenters suggested technical or editorial changes regarding the interim rule and the model notice. For example, commenters noted that the language in Model Notices 13–B and 13–C referring to local and nonlocal checks could be confusing for customers of banks that normally do not distinguish between local and nonlocal checks. The model notices may be tailored to a bank's availability policy, and the references to local and nonlocal checks may be eliminated where appropriate. Another commenter believed that the statement regarding the applicability of exception holds to local and nonlocal checks, as well as to next-day checks, as repeated unnecessarily throughout the Commentary to § 229.13. The Board has retained the statements in the separate paragraphs of the Commentary to § 229.13 for purposes of clarity. Another commenter made a number of suggestions intended to make the amendments more clear and precise, some of which have been adopted by the Board (i.e., the Board has removed references in § 229.13 to the temporary schedule, which is no longer in effect, added an example of the exception hold

period calculation in § 229.13(h), and made other minor wording changes throughout § 229.13.) The Board also has made a technical change to § 229.1 (amending the statutory authority citations).

Suggestions of further changes to Regulation CC were also received, such as extending the safeguard exception holds to new accounts, extending the definition of a new account beyond the current thirty days, extending the allowable hold on a local check to three days, adding new safeguard exceptions, expanding the notice of nonpayment requirement to include checks greater than $500 returned because of a closed account, making the reasonable exception hold period the same for local and nonlocal checks, and clarifying the applicability of Regulation CC to "paper debits," those items that have all the features of checks except the account holders signature. These matters were not subject to public comment, and some would require a statutory amendment. The Board may consider further regulatory changes at a later date.

Questions on Consumer Account Classifications

The Board's interim amendment did not relieve banks from the requirement of providing consumer account-holders with large deposit and redeposited check exception hold notices upon each deposit to which the exception is applied. The amendment to § 604(f) of the Act authorized the Board to apply the one-time notice provision for the large deposit and redeposited check exceptions to classes of consumer accounts that generally have a large number of such deposits. The Board requested comment on whether the one-time notice provision for these types of exceptions should be extended to certain classes of consumer accounts, and if so, how those classes of accounts should be categorized. Specifically, the Board requested comment on the following questions:

i. Are there classes of consumer accounts, such as high balance accounts, that would generally have a large number of daily aggregate deposits of checks in excess of $5,000?

ii. What is a proper measurement of a "large number" of large deposits or redeposited checks, and over what period of time should such a measurement be taken?

iii. Would it be operationally feasible for depositary banks to monitor deposits to consumer accounts to determine which accounts have a large number of daily aggregate deposits of checks in excess of $5,000 or a large number of deposits of redeposited checks?

Twenty-nine commenters responded to the questions posed by the Board. Generally, commenters indicated that while the designation of certain classes of consumer accounts to receive one-time notices was possible, it would not be feasible operationally because the size of any such classes would probably be very small.

Fourteen commenters believed that the exception holds should be extended to consumer accounts as well as nonconsumer accounts, with three commenters citing losses from consumer accounts and the large number of holds placed on consumer accounts as reasons for the extension. Generally, the commenters believed that it would not be feasible to monitor one class of consumer accounts and provide one-time notices to these customers, while providing individual notices to other consumer customers. They noted that a uniform policy would eliminate the possibility of teller confusion associated with invoking such exceptions, and consequently there would be less risk of error. These commenters suggested that the information regarding the availability of deposits in excess of $5,000 could be incorporated in the funds availability policy disclosure given to all customers, reducing confusion. One of these commenters stated that it appeared that the language contained in FDICIA section 225 was sufficiently general to support this interpretation. In addition, one commenter believed that banks were as likely to experience fraud in low-balance accounts as in high-balance ones.

Question (i)

Nine commenters stated they were unable to identify a specific class of consumer accounts that have a high incidence of aggregate daily deposits greater than $5,000, or have a large number of redeposited checks. Two of these commenters added that even if such accounts could be identified, they would likely be accounts on which the bank generally does not place exception holds.

Other commenters attempted to identify specific classes of consumer accounts that might be eligible for one-time notices. One commenter believed an appropriate class might be composed of persons that do not consider themselves to be commercial customers or do not pay commercial checking service charges, such as doctors, lawyers, small merchants, or real estate trusts. Another commenter stated that certain high-balance consumer accounts should be subject to the one-time notice, with the definition of "high balance" to be determined by each bank. Another commenter suggested that the class of accounts be determined by account history. Two commenters stated that the Federal Reserve should conduct research to determine such classes. One commenter recommended that, for simplicity, one-time notices be allowed only on nonconsumer accounts.

Question (ii)

Thirteen commenters addressed the question of how to define "large number" and what time period would be appropriate to use as a measurement. Six commenters provided specific numbers, ranging from two deposits to as many as eight deposits during a one-month time period. Four other commenters recommended a threshold that could vary from bank to bank. One commenter suggested that marketers of check kiting software be consulted regarding their experience.

Question (iii)

Eighteen commenters discussed whether it would be operationally feasible to monitor consumer accounts to determine which accounts have a large number of large deposits or redeposited checks. Although most of these commenters agreed that the capability existed to monitor consumer accounts, it generally was not considered feasible because of its cost. Seven commenters indicated that consumer accounts normally do not have aggregate daily deposits in excess of $5,000 or a large number of redeposited checks, therefore monitoring would not be cost effective. One commenter was concerned that monitoring would be burdensome to banks and not in keeping with the President's moratorium on regulatory initiatives that could hinder growth and profitability. Another commenter believed that monitoring the number of redeposited checks deposited to consumer accounts would require those checks to be encoded, necessitating a change in industry standards. Two commenters cited the expense of systems development. One other commenter believed that monitoring accounts would be more onerous than the current notification system. Two commenters indicated that monitoring might be feasible if done on all accounts, not just specific classes.

The Board has not expanded the applicability of the one-time exception hold notice for large deposits and redeposited checks. The Act specifically limits the applicability of the one-time

hold notice to consumer accounts "that generally have a large number of such deposits." The Board does not believe there is an easily-identifiable subset of consumer accounts that meets this requirement, nor would it be practicable for banks to monitor consumer accounts to verify that they meet any criteria the Board established.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The rule applies to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost for all depositary banks by broadening the scope of the exception holds and providing the one-time notice requirement in certain cases. Because the rule should benefit and reduce costs for all institutions that choose to take advantage of the rule change, it is not necessary to consider alternatives to minimize the economic impact.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, the interim rule amending Regulation CC, 12 CFR part 229, which was published at 57 FR 3277–3282 on January 29, 1992, is adopted as a final rule with the following changes:

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.1, paragraph (a) is revised to read as follows:

§ 229.1 Authority and purpose; organization.

(a) *Authority and purpose.* This part (Regulation CC; 12 CFR part 229) is issued by the Board of Governors of the Federal Reserve System (Board) to implement the Expedited Funds Availability Act (Act) (title VI of Pub. L. 100–86, 101 Stat. 552, 635), as amended by section 1001 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625, 104 Stat. 4079, 4424) and sections 212(h), 225, and 227 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236, 2303, 2307).

* * * * *

3. In § 229.13, the term ", 229.11" is removed in paragraphs (b), (c) introductory text, (d) introductory text, (e)(1), (f) introductory text, (h)(1), and (h)(3); the phrase "§ 229.11 or" is removed in paragraph (h)(2); the word "in" is removed after the first occurrence of the word "under" in paragraph (h)(4); and paragraphs (g)(2)(ii) and (g)(3)(iii) are revised as follows:

§ 229.13 Exceptions.

* * * * *

(g) *Notice of exception.* * * *

(2) * * *

(ii) The time period within which deposits subject to the exception generally will be available for withdrawal.

* * * * *

(3) * * *

(iii) The time period within which deposits subject to the exception generally will be available for withdrawal; and

* * * * *

Appendix E to Part 229—[Amended]

4. Appendix E is amended as set forth below:

a. In the Commentary under section 229.2(n), a new sentence is added after the first sentence and the last sentence is revised;

b. In the Commentary under section 229.13, the term ", 229.11" is removed in the first paragraph of paragraph (g) and the fifth paragraph of paragraph (h); in paragraph (b), the last sentence of the second paragraph is revised; in paragraph (d), the last paragraph is revised; in paragraph (e), the third sentence of the first paragraph is revised; in paragraph (f), the fifth sentence is revised; in paragraph (g), the second sentence of the sixth paragraph, the first and last sentences of the seventh paragraph, and the second sentence of the ninth paragraph are revised and two new sentences are added before the last sentence of the seventh paragraph; and in paragraph (h), a new sentence is added to the end of the fourth paragraph;

c. In the Commentary under section 229.16(c), the last paragraph of paragraph (c)(1) is revised and a new sentence is added to the end of paragraph (c)(3) as follows:

Appendix E—Commentary

* * * * *

Section 229.2 Definitions

* * * * *

(n) * * * An account that does not meet the definition of "consumer account" is a nonconsumer account. * * * Section 229.13(g)(2) (one-time exception notice) and § 229.19(d) (use of calculated availability) apply only to nonconsumer accounts.

* * * * *

Section 229.13 Exceptions

* * * * *

(b) *Large deposits.*

* * * * *

* * * An additional $4,900 of the proceeds of the local check must be available for withdrawal on Wednesday in accordance with the local schedule, and the remaining $4,000 may be held for an additional period of time under the large deposit exception.

* * * * *

(d) *Repeated overdrafts.*

* * * * *

This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii).

(e) *Reasonable cause to doubt collectibility.* * * * When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). * * *

* * * * *

(f) *Emergency conditions.* * * * When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). * * *

(g) *Notice of exception.*

* * * * *

* * * When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception generally will be available for withdrawal, the requirement may be satisfied if the one-time notice states when on us, local, and nonlocal checks will be available for withdrawal if an exception is invoked. * * *

Under paragraph (g)(2), if a nonconsumer account (see Commentary to 229.2(n)) is subject to the large deposit or redeposited check exception, the depositary bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). * * * A one-time notice may state that the depositary bank will apply exception holds to certain subsets of deposits

to which the large deposit or redeposited check exception may apply, and the notice should identify such subsets. For example, the depositary bank may apply the redeposited check exception only to checks that were redeposited automatically by the depositary bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depositary bank may send individual hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–13).

* * * * *

* * * Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply (see Model Form C–13C). * * *

* * * * *

(h) *Availability of deposits subject to exceptions.* * * *

* * * * *

* * * For example, if a customer deposits a $7,000 cashier's check drawn on a nonlocal bank, and the depositary bank applies the large deposit exception to that check, $5,000 must be available for withdrawal on the next business day after the day of deposit and the remaining $2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depositary bank establishes that a longer hold is reasonable.

* * * * *

Section 229.16 Specific Availability Policy Disclosure

* * * * *

(c) *Longer delays on a case-by-case basis*—(1) * * *

* * * * *

A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by § 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under § 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements. A bank that imposes delay on a case-by-case basis may avail itself of the one-time notice provisions in § 229.13(g)(2) and (3) for deposits to which those provisions apply.

* * * * *

(3) * * * Paragraph (c)(3) applies when a bank provides a case-by-case notice in accordance with paragraph (c)(2) and does not apply if the bank has provided an exception hold notice in accordance with § 229.13.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–19076 Filed 8–13–92; 8:45 am]

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12 CFR Part 229

[Docket No. R–0745; Regulation CC]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments make permanent the current availability schedules for deposits at nonproprietary automated teller machines and reaffirm the administrative enforcement authority of federal regulatory agencies over U.S. offices and branches of foreign banks.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associated General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only:* Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA," Pub. L. No. 102–242, 105 Stat. 2236 (1991)) amended the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001–4010), effective December 19, 1991. Section 227 of the FDICIA amended section 603(e) of the Act regarding deposits at nonproprietary automated teller machines ("ATMs"). Section 212(h) of the FDICIA amended section 610(a) of the Act to reaffirm the administrative enforcement authority of federal regulatory agencies over U.S. branches and agencies of foreign banks. The Board requested comment on proposed amendments to Regulation CC (12 CFR part 229) and revisions to the Commentary to implement the amendments to the Act (57 FR 3277, January 29, 1992). The Board is adopting the proposed amendments in final form.[1]

The Board received 38 comments on the proposed amendments, all of which discussed the availability schedules for deposits at nonproprietary ATMs. Six commenters also discussed the proposed amendment regarding administrative enforcement powers over U.S. offices and branches of foreign banks. The distribution by type of commenter is shown below:

Type	Number
Commercial banks/bank holding companies	16
Credit unions	6
Savings institutions	3
Clearing houses	1
Trade associations	6
Federal Reserve Banks	4
Other	2
Total	38

Deposits at Nonproprietary ATMs

Currently, under § 229.12(f)(1) of Regulation CC, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM [2] as though the deposits were nonlocal checks, i.e., make them available by the fifth business day after the day of deposit. This special treatment was accorded deposits made at nonproprietary ATMs because the depositary bank cannot ascertain the composition of these deposits (i.e., whether the deposit consists of cash, checks generally subject to next-day availability, or local or nonlocal checks). As of November 28, 1992, § 229.12(f)(2) would have required nonproprietary ATM deposits of cash, "next-day" checks (as described in § 229.10(c)(1)(i) through (v) and (vii)), and local and other checks (as described in § 229.12(b)) to be made available by the second business day following the banking day of deposit. Depositary banks could have continued to make nonlocal checks deposited at a nonproprietary ATM available by the fifth business day following the banking day of deposit.[3]

[1] Section 225 of the FDICIA amended section 605 of the Act regarding exception holds for "next-day" and "second-day" availability checks and one-time exception hold notices. To allow banks to avail themselves of these changes immediately, the Board adopted interim amendments to Regulation CC (57 FR 3385, January 29, 1992) and has adopted the interim rule, with technical and clarifying changes, in final form. See Docket R–0744, elsewhere in today's **Federal Register**.

[2] A nonproprietary ATM generally is an ATM that is not owned or operated by the depositary bank.

[3] The effective date for the shorter schedules for nonproprietary ATM deposits was extended from

Continued

Banks and ATM operators raised concerns with Congress and the Board about the operational problems and potential for fraud under the shorter schedules for nonproprietary ATM deposits. In two reports to Congress on the implementation of the Act and two reports specifically discussing deposits to nonproprietary ATMs,* the Board summarized these concerns and recommended that Congress amend the Act to provide fifth-day availability for all deposits at nonproprietary ATMs on a permanent basis.

The FDICIA amendments to section 603(e) of the Act eliminated the shorter holds for deposits at nonproprietary ATMs that were scheduled to take effect in November 1992 and extended the current 5-day hold permanently. The Board proposed amendments to §§ 229.12(a) and (f) of the regulation and revisions to the Commentary to reflect these changes.

Thirty-four commenters supported the proposed amendments. Fourteen commenters believed that banks would be exposed to increased risk of fraud and loss of the availability scheduled for deposits made at nonproprietary ATMs were the same as the availability schedule for deposits made at proprietary ATMs or teller's stations. Seven commenters stated that because banks lack the technology to ascertain the composition of deposits made at nonproprietary ATMs, the current availability schedule should be made permanent.

Six commenters stated that, although they did not allow their customers to make deposits at nonproprietary ATMs, they supported the amendment because it would give banks increased flexibility and protection. Several of these commenters stated that they might begin providing nonproprietary ATM deposit services, given the reduced risk provided by the amendment. Five commenters believed that the amendment would ensure that nonproprietary ATM deposit services would continue to be offered to customers, as some banks were considering discontinuing the service because of the shorter schedule that would have taken effect in November 1992.

One commenter that currently does not accept deposits at nonproprietary ATMs believed that individual ATM networks should have the right to require participating banks to provide prompter availability if supporting agreements are executed between the participants. The Board notes that depositary banks are free to provide faster availability for any type of deposit than is required by the regulation.

Another commenter stated his understanding that Hawaiian banks could extend the five-day hold of deposits at nonproprietary ATMs by an additional day. Section 229.12(e) provides that a one-day extension is permissible for deposits in Hawaii, as well as deposits in Alaska, Puerto Rico, and the U.S. Virgin Islands. However, this one-day extension applies only to checks for which the paying bank is not located in the same state as the depositary bank. Therefore, the one-day extension may not be helpful to a depositary bank that can not ascertain the composition of a deposit to a nonproprietary ATM.

One commenter indicated that the amendment was unclear as to whether deposits at nonproprietary ATMs were subject to the $100 next-day availability requirement. Under the Act and the regulation, the next-day availability provisions (including the $100 provision) do not apply to deposits at nonproprietary ATMs. The Commentary to § 229.12(f) adopted by the Board clearly explains that § 229.10(c)(1)(vii), which requires a depositary bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit, does not apply to deposits to a nonproprietary ATM.

The Board is adopting the proposed amendments to §§ 229.12 (a) and (f) and the corresponding Commentary, with minor technical changes.

Administrative Enforcement

Title II, Subtitle A of the FDICIA affirmed the supervisory responsibilities of U.S. banking regulatory agencies over U.S. offices and branches of foreign banks. Section 212(h) of the FDICIA made conforming changes to the administrative enforcement provisions in section 610(a) of the Act. These amendments were effective December 19, 1991. The Board proposed conforming amendments to § 229.3(a) of Regulation CC. (U.S. branches and agencies of foreign banks are already subject to the substantive requirements of the Act and Regulation CC.) Six commenters supported the proposed amendments without specific comment. The Board is adopting the conforming amendments as proposed.

Final Regulatory Flexibility Analysis

Two of the three requirements of final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost of all depositary banks by eliminating the requirement for shorter holds on deposits made to nonproprietary ATMs after November 27, 1992. In addition, small institutions should not be effected by the clarification of U.S. banking regulatory agencies' administrative enforcement authority over U.S. offices and branches of foreign banks. Because the rule should benefit and reduce costs for all institutions that choose to take advantage of the rule change, it is not necessary to consider alternatives to minimize the economic impact.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.3, paragraph (a)(1) is revised and concluding text to paragraph (a) is added after paragraph (a)(3) to read as follows:

§ 229.3 Administrative enforcement.

(a) * * *

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

September 1, 1990, to November 28, 1992, by the Cranston-Gonzales National Affordable Housing Act of 1990 (Pub. L. No. 101-625; § 1001). The Board adopted conforming amendments to Regulation CC at that time. *See* 55 FR 50816, December 11, 1990, (interim rule) and 56 FR 7799, February 26, 1991 (final rule).

* *See*, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991 and March 1990, and Deposits at Nonproprietary Automated Teller Machines: Report to Congress Pursuant to the Expedited Funds Availability Act, October 1989 and July 1990.

(i) National banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

* * * * *

The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

3. In § 229.12, paragraph (a) is revised, paragraphs (f)(1)(ii) and (f)(2) are removed, and the designation "(1)(i)" in paragraph (f) is removed to read as follows:

§ 229.12 Permanent availability schedule.

(a) *Effective date.* The permanent availability schedule contained in this section is effective September 1, 1990.

* * * * *

Appendix E to Part 229—[Amended]

4. Appendix E to part 229 is amended, in the Commentary under section 229.12, by removing the second and third sentences of paragraph (a) and revising paragraph (f) to read as follows:

Appendix E—Commentary

* * * * *

Section 229.12 Permanent Availability Schedule

* * * * *

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week. The provisions of § 229.10(c)(1)(vii) requiring a depository bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–19077 Filed 8–13–92; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–ANM–21]

Amendment to VOR Federal Airway V–235; WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters a portion of the description of VOR Federal Airway V–235 in the vicinity of Rock Springs, WY. A step-down approach fix, which this action provides, is necessary to facilitate aircraft arriving and descending into the Rock Springs terminal area. This action increases safety.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1992, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend a portion of VOR Federal Airway V–235 in the vicinity of Rock Springs, WY (57 FR 10848). A step-down approach fix, which this action provides, is necessary to facilitate aircraft arriving and descending into the Rock Springs terminal area. This action increases safety. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of Federal Airway V–235 by establishing an approach fix northeast of Rock Springs, WY, VOR. This fix allows lowering of the minimum en route altitude for a segment of that airway from 9,500 feet mean sea level (MSL) to 9,200 feet MSL, thereby improving the approach angle into the Rock Springs terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O.10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-235 [Revised]

From Peach Springs, AZ; Mormon Mesa, NV, via INT Mormon Mesa 059° and Cedar City, UT, 197° radials; Cedar City; Milford, UT; Delta, UT; Fairfield, UT; 10 miles, 15 miles, 135 MSL, 46 miles, 125 MSL, Fort Bridger, WY. From Rock Springs, WY, 20 miles, 41 miles, 92 MSL, 37 miles, 107 MSL, Muddy Mountain, WY, to Newcastle, WY.

* * * * *

Issued in Washington, DC, on August 5, 1992.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-19382 Filed 8-13-92; 8:45 am]

BILLING CODE 4910-13-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning September 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after September 1, 1992, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant general Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the method for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since August 1, 1992. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after September 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6 percent to 5¾ percent.

Concurrently with the first publication of prospective interest rates and factors, the PBGC issued a rate book containing tables of actuarial factors to assist persons working with the interest rates. See, Notice of proposed change in the method for setting the interest rate and factors, 45 FR 38415, 38417 (June 9, 1980). The tables in the PBGC's rate book are based on interest rate assumptions from 6 percent to 11 percent, and do not apply to interest rates above or below those percentages. Accordingly, the rate book cannot be used in connection with the 5¾ rate now being published. The PBGC believes, however, that the advent and widespread use of the microcomputer as a business tool since 1980 and the consequent automation of actuarial functions have essentially eliminated the need for such tables by plan administrators and plan actuaries who are valuing benefits.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after September 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. Rate Set 99 of appendix B is revised and Rate Set 100 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
* * * * *		*		*		*		
99	8-'-92	9-1-92	6.00	1.0525	1.0400	1.0400	7	8
100	9-1-92		5.75	1.0500	1.0400	1.0400	7	8

Issued in Washington, DC, on this 11th day of August, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-19447 Filed 8-13-92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of the valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1992.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in cost or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of Subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. §§ 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
*		*			*			*		*			*		*	
September 1991	.06375	.0625	.06125	.06	.05875	.0575	.0575	.0575	.0575	.0575	.05625	.05625	.05625	.05625	.05625	.055

Issued at Washington, DC, on this 11th day of August 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-19446 Filed 8-13-92; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH2-3-5463, A-1-FRL-4191-9]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Readoption of the Rules Governing the Control of Air Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted by the State of New Hampshire consisting of a readoption of the Rules Governing the Control of Air Pollution for the State of New Hampshire. The State regulations have been revised with miscellaneous language changes and renumbering for the purpose of reorganization. Other

more significant revisions amend EPA-approved regulations and add new regulations to the New Hampshire SIP. The intended effect of this action is to approve the revision made by the State of New Hampshire. The action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on September 14, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and New Hampshire Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Jeanne F. Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: On March 15, 1983 (48 FR 10830), EPA approved major revisions to the New Hampshire SIP involving format changes, miscellaneous language changes for purposes of consistency, and renumbering of the State regulations governing the control of air pollution. Since that time, revisions to several parts of the SIP have been made to meet federal statutory and regulatory requirements.

On October 29, 1991 (56 FR 55644), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of a revision to New Hampshire's SIP consisting of a readoption of CHAPTERS Env-A 100–1300 of the Rules Governing the Control of Air Pollution for the State of New Hampshire. The formal SIP revision was submitted by New Hampshire on February 12, 1991. Most of the State regulations in the submittal are federally approvable because they were previously approved by EPA in the March 15, 1983 **Federal Register** notice. Except for those regulations specifically identified and discussed in the NPR, this action does not approve substantive revisions to existing regulations or approve additional regulations to the New Hampshire SIP.

For more details on the changes discussed in the NPR, and the minor changes not mentioned, refer to the technical support document prepared by EPA for this revision which is available from the EPA Regional office listed in the ADDRESSES section of this notice.

On May 7, August 20 and August 26, 1991, the New Hampshire Air Resources Division (NHARD) submitted letters asking that certain portions of the February 12, 1991 submittal be withdrawn since they are either in the process of revision or not federally enforceable. In addition, on June 12, 1991, the NHARD submitted a supplement to the revision to the State's SIP entitled "NHARD Policy and Procedure for Air Quality Impact Modeling, Revised." This document has been incorporated by reference by the State in the Rules Governing the Control of Air Pollution at Sections Env-A 405.05(c)–(d), 603.02(p) and 603.03(g). A preliminary review of this document determined that it contains several inconsistencies with EPA policy. On January 28, 1992, EPA sent the NHARD a letter outlining the necessary changes to be made to make the document, last revised on April 4, 1991, approvable and consistent with EPA policy. The State has decided not to revise the document at this time and submitted letters on March 6 and May 6, 1992 withdrawing the document entitled "NHARD Policy and Procedure for Air Quality Impact Modeling, Revised" and the sections which reference this document from the February 12, 1991 SIP submittal. The sections that were withdrawn by the NHARD in the May 7, August 20 and August 16, 1991, March 6 and May 6, 1992 letters are as follows:

Chapter Env–A 100: Sections Env–A 101.21, .27, .33, .51, .53, .58, .63 and .98; and Parts Env–A 102–103
Chapter Env–A 200: Part Env–A 206; Part Env–A 208; and Sections 209.01–.04
Chapter Env–A 300: Part Env–A 304
Chapter Env–A 400: Section Env–A 405.05(c)–(d); and Part Env–A 406
Chapter Env–A 500: Parts Env–A 603.02(p) and 603.03(f)–(g)
Chapter Env–A 600: Sections Env–A 501–506
Chapter Env–A 800: Part Env–A 803
Chapter Env–A 1000: Part Env–A 1002
Chapter Env–A 1100: Part Env–A 1101
Chapter Env–A 1200: Sections Env–A 1204.12 and 1206.03
Chapter Env–A 1300: Parts Env–A 1301–1305.

Other specific requirements of this rulemaking and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the following portions of the Rules Governing the Control of Air Pollution submitted as a revision to the New Hampshire SIP on February 12, 1991:

Chapter Env–A 100: Sections Env–A 101.01–.20, 101.22–.26, 101.28–.32, 101.34–50, 101.52, 101.54–.57, 101.59–.62, 101.64–.97 and 101.99
Chapter Env–A 200: Parts Env–A 201–205; Part Env–A 207; Section Env–A 209.05; and Part Env–A 210
Chapter Env–A 300: Parts Env–A 301–303
Chapter Env–A 400: Part Env–A 401–405.05(b) and 405.06
Chapter Env–A 600: Parts Env–A 601–602; Sections Env–A 603.01–.02(o) and 603.03(a)–(e); and Parts Env–A 604–616
Chapter Env–A 700: Parts Env–A 701–705
Chapter Env–A 800: Parts Env–A 801–802; and Part Env–A 804
Chapter Env–A 900: Parts Env–A 901–903
Chapter Env–A 1000: Part Env–A 1001
Chapter Env–A 1200: Parts Env–A 1201–1203; Sections 1204.01–.11 and 1204.13–.19; Part Env–A 1205; Sections Env–A 1206.01–.02 and 1206.04–.06; and Parts Env–A 1207–1208.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

EPA has submitted a request for a permanent waiver from Office of Management and Budget (OMB) review for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

OMB has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

EPA has reviewed the revision of this notice for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. Although New Hampshire submitted this SIP revision after November 15, 1990, EPA has determined that this action is approvable. The revision may not include all of the new Title I and Title V requirements; however, it strengthens the requirements in New Hampshire's existing SIP. Furthermore, many of the provisions of the new law do not require State submittals until some time in the future. EPA has recently issued guidance on the revised Title I requirements; New Hampshire will adopt regulations meeting these new requirements and submit them in a separate submittal. EPA had decided to approve this revision today in order to strengthen the SIP during this transition period.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 24, 1992.

Paul Keough,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(45) Revisions to the State Implementation Plan consisting of a readoption of the Rules Governing the Control of Air Pollution for the State of New Hampshire submitted by the New Hampshire Air Resources Division on February 12, 1991.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated February 12, 1991 submitting revisions to the New Hampshire State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the State of New Hampshire effective on December 27, 1990:

- Chapter Env-A 100: Sections Env-A 101.01–.20, 101.22–.26, 101.28–.32, 101.34–50, 101.52, 101.54–.57, 101.59–.62, 101.64–.97 and 101.99.
- Chapter Env-A 200: Parts Env-A 201–205; Part Env-A 207; Section Env-A 209.05; and Part Env-A 210.
- Chapter Env-A 300: Parts Env-A 301–303.
- Chapter Env-A 400: Part Env-A 401–404; Sections Env-A 401–404; Sections Env-A 405.01–.05(b) and 405.06.
- Chapter Env-A 600: Parts Env-A 601–602; Sections Env-A 603.01–.02(o) and 603.03(a)-(e); and Parts Env-A 604–616.
- Chapter Env-A 700: Parts Env-A 701–705.
- Chapter Env-A 800: Parts Env-A 801–802; and Part Env-A 804.
- Chapter Env-A 900' Parts Env-A 901–903.
- Chapter Env-A 1000: Part Env-A 1001.
- Chapter Env-A 1200: Parts Env-A 1201–1203; Sections 1204.01–.11 and 1204.13–.19; Part Env-A 1205; Sections Env-A 1206.01–.02 and 1206.04–.06; and Parts Env-A 1207–1208.

(ii) Additional materials.

(A) Letters from the New Hampshire Air Resources Division dated May 7, August 20, and August 26, 1991, March 6, and May 6, 1992 withdrawing certain portion of the February 12, 1991 SIP submittal.

3. In § 52.1525, the Table 52.1525 is revised to read as follows:

§ 52.1525 EPA-approved New Hampshire State Regulations

* * * * *

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter [2]	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
Organizational Rules: Definitions.	CH Air 100	12/17/81	3/15/83	48 FR 10830	(c)(22)	Sections Air 101.01–.03; .27; .31; .50; .52; .57; .63; .70–.73; .76; .78; .90; .97 and PARTs Air 102 and 103 are not part of the approved SIP.
		7/21/83	2/01/84	49 FR 3989	(c)(28)	Approved Section Air 101.74, Def of 'process weight.'
	Env-A 100	11/16/89	6/13/91	56 FR 27197	(c)(43)	Approved Sections Env-A 101.79, Def. of 'Reasonable Available Control Technology' and Env-A 101.98, Def. of 'Volatile Organic Compound.'
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 101 renumbered and completely replaced; Sections Env-A 101.21; .27; .33; .51; .53; .58; .63; .98; and Parts Env-A 102 and 103 are not part of the approved SIP.
Procedural Rules	CH Air 200	12/17/81	3/15/83	48 FR 10830	(c)(22)	Parts Air 201–204 and Parts Air 206–210 are not part of the approved SIP.
		10/21/82	4/21/83	48 FR 17077	(c)(24)	Section Air 205.10 added.
	Env-A 200	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Parts Env-A 206 and 208 and Sections Env-A 209.01–04 are not part of the approved SIP.

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE—Continued

Title/subject	State citation chapter [2]	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
Ambient Air Quality Standards.	CH Air 300	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 304 is not part of the approved SIP.
	Env-A 300	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 304 is not part of the approved SIP.
Sulfur Content Limits in Fuels.	CH Air 400	12/17/81	3/15/83	48 FR 10830	(c)(22)	Section Air 402.02 is not part of the approved SIP.
		2/20/75	3/23/84	49 FR 11094	(c)(26)	Section Air 402.02 added, raising allowable sulfur-in-oil limit for but 10 sources.
		10/20/83	8/07/84	49 FR 31415	(c)(29)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for 5 source excluded at (c)(26) above.
		12/15/83	8/01/84	49 FR 30695	(c)(31)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for 2 sources excluded at (c)(26) above.
		4/17/86	2/02/87	52 FR 3117	(c)(35)	Revision restricting emission limits for Dartmouth College.
		1/17/85	4/15/87	52 FR 12164	(c)(36)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for James River Corp.—Cascade.
		9/09/85	12/14/87	52 FR 47392	(c)(38)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for James River Corp.—Groveton.
	Env-A 400	12/24/90	[Insert Date of FR of this document].	[Insert FR citation from published date].	(c)45)	Part Env-A 405 renumbered and completely replaced; Section Env-A 405.05 (c) and (d); and Part Env-A 406 are not part of the approved SIP.
Statewide Permit System	CH Air 600	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 609 repealed at (c)(16).
		1/26/84	3/13/85	50 FR 10004	(c)(36)	Revisions to Part Air 610.
	Env-A 600	12/24/90	[Insert Date of FR publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 603 renumbered and completely replaced; Sections Env-A 603.02(p), 603.03(f) and 603.03(g) are not part of the approved SIP.
Permit Fee System	CH Air 700	12/17/81	3/15/83	48 FR 10830	(c)(22)	
		12/20/84	9/17/87	52 FR 35082	(c)(37)	Revisions to Sections Air 704.01-.02 and Air 706.01-.02.
	Env-A 700	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	
Testing and Monitoring	CH Air 800	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 803 is not part of the approved SIP.
	Env-A 800	11/16/89	6/13/91	56 FR 27197	(c)(43)	Part Env-A 804 added; Revision to Section Env-A 802.07.
		12/24/90	8/14/91	56 FR 40253	(c)(41)	Sections Env-A 802.09-.10 added.
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 803 is not part of the approved SIP.
Owner or Operator Obligations.	CH Air 900	12/17/81	3/15/83	48 FR 10830	(c)(22)	
	Env-A 900	11/16/89	6/13/91	56 FR 27197	(c)(43)	Sections Env-A 901.021-.022 and 901.05 added; Revision to Section Env-A 901.02.
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	
Prevention, Abatement, and Control of Open Source Air Pollution.	CH Air 1000	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 1002 is not part of the approval SIP.
	Env-A 1000	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 1002 is not part of the approval SIP.
Prevention, Abatement, and Control of Stationary Source Air Pollution Part.	CH Air 1200	6/17/82	3/15/83	48 FR 10830	(c)(22)	Section Air 1201.07 and Part Air 1206 are not part of the approved SIP.
		2/19/80	10/31/83	48 FR 50077	(c)(27)	Revisions to Section 1204.02(c) and 1204.21(j); Section 1204.17 added.
		7/21/83	2/01/84	49 FR 3989	(c)(28)	Revision to Section Air 1204.01.
		2/16/84	6/01/84	49 FR 24724	(c)(30)	Section Air 1201.05(e) added.

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE—Continued

Title/subject	State citation chapter [2]	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
		12/20/84	9/17/87	52 FR 35082	(c)(37)	Revisions to Sections Air 1202.07–.09; Section Air 1202.10 added.
	Env-A 1200	11/16/89	6/13/91	56 FR 27197	(c)(43)	Revisions to Sections Env-A 1204.01–.16; Section Env-A 1204.19 added.
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Section Env-A 1206.03 is not part of the approved SIP.

[1] These regulations are applicable statewide unless otherwise noted in the COMMENTS section.
[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

4. Section 52.1526 is removed and reserved

5. Section 52.1527 is amended by revising paragraph (b) to read as follows:

§ 52.1527 Rules and regulations.

* * * * *

(b) The following elements are not part of the approved SIP:

(1) Intergovernmental consultations
(2) Public notification

(3) Conflict of Interest
(4) Non-SIP regulations' numbers listed below:

- Chapter Env-A 100: Sections Env-A 101.21, .27, .33, .51, .53, .58., .63 and
- 98; and Parts Env-A 102–103
- Chapter Env-A 200: Part Env-A 206; Part Env-A 208; and Sections 209.01–.04
- Chapter Env-A 300: Part Env-A 304
- Chapter Env-A 400: Section Env-A 405.05(c)–(d) and Part Env-A 406
- Chapter Env-A 500: Parts Env-A 501–506
- Chapter Env-A 600: Sections Env-A 603.02(p), 603.03(f)–(g)
- Chapter Env-A 800: Part Env-A 803
- Chapter Env-A 1000: Part Env-A 1002
- Chapter Env-A 1100:Part Env-A 1101
- Chapter Env-A 1200: Sections Env-A 1206.03
- Chapter Env-A 1300; Parts Env-A 1301–1305

§ 52.1530 [Removed]

6. Section 52.1530 is removed and reserved.

[FR Doc. 92–19328 Filed 8–13–92; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412–2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, August 6, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 67,500 coho salmon for the subarea will be reached by midnight, August 6, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, August 6, 1992. Actual notice to affected fishermen was given prior to the next scheduled opening of this fishery at 0001 hours local time, August 9, 1992, through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 28, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, would open July 19 and continue through the earliest of September 13 or the attainment of either a subarea quota of 67,500 coho salmon or an overall quota of 33,000 chinook salmon north of Cape Falcon, Oregon.

Based on the best available information on August 6, 1992, the recreational fishery catch in the subarea from Leadbetter Point to Cape Falcon is projected to reach the 67,500 coho salmon quota by midnight, August 6, 1992. Therefore, the fishery in this subarea is closed to recreational fishing for all salmon species effective 2400 hours local time, August 6, 1992.

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this closure was given prior to the next scheduled opening of this fishery at 0001 hours local time, August 9, 1992, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding the closure of the recreational fishery between Leadbetter Point, Washington, and Cape Falcon, Oregon. The States of Washington and Oregon will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 28, 1992.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19431 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the commercial salmon fishery for all salmon species in the exclusive economic zone (EEZ) from Cascade Head, Oregon, to the U.S.-Mexico border at midnight, August 7, 1992, to ensure that the coho salmon ceiling for the subarea south of Cascade Head is not exceeded; regularly scheduled commercial fisheries from Cascade Head, Oregon, to the U.S.-Mexico border are reopened for all salmon species except coho salmon at 0001 hours August 8, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined that the subarea catch ceiling for coho salmon has been reached, and the fishery for all salmon species should be closed at midnight, August 7, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, August 7, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Regularly scheduled commercial fisheries in this subarea reopen for all salmon species except coho salmon effective at 0001 hours local time, August 8, 1992. Comments will be accepted through August 28, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140, or Rodney R. McInnis at (310) 980-4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 66.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery from Cape Falcon, Oregon, to the U.S.-Mexico border is limited to an overall combined catch and hooking mortality impact of 60,000 coho and an overall catch quota of 57,000 coho salmon. Within this overall catch quota, there is a subarea catch ceiling that allows a harvest of no more than 40,000 coho south of Cascade Head, Oregon.

Based on the best available information on August 6, 1992, the commercial fishery catch south of Cascade Head, Oregon, is projected to reach the 40,000 coho salmon catch ceiling by midnight, August 7, 1992. Therefore, commercial salmon fishing for all salmon species from Cascade Head, Oregon, to the U.S.-Mexico border is closed effective 2400 hours local time, August 7, 1992. As announced in the notice of 1992 management measures, regularly scheduled commercial fisheries from Cascade Head, Oregon, to the U.S.-Mexico border reopen for all salmon species except coho salmon effective 0001 hours local time, August 8, 1992.

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this closure was given prior to 2400 hours local time, August 7, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding the closure of the commercial fishery from Cascade Head, Oregon, to the U.S.-Mexico border. The states of Oregon and California will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 28, 1992.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19432 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, and 1138

[Docket No. AO-14-A65R01, etc; DA-91-013]

Milk in the New England and Certain Other Marketing Areas; Emergency Reopened Hearing on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part and marketing area	AO Nos.
1001 New England	AO-14-A65-R01
1002 New York-New Jersey	AO-71-A80-R01
1004 Middle Atlantic	AO-160-A68-R01
1005 Carolina	AO-388-A5-R01
1007 Georgia	AO-366-A34-R01
1011 Tennessee Valley	AO-251-A36-R01
1030 Chicago Regional	AO-361-A29-R01
1033 Ohio Valley	AO-166-A62-R01
1036 Eastern Ohio-Western Pennsylvania	AO-179-A57-R01
1040 Southern Michigan	AO-225-A43-R01
1044 Michigan Upper Peninsula	AO-299-A27-R01
1046 Louisville-Lexington-Evansville	AO-123-A63-R01
1049 Indiana	AO-319-A40-R01
1065 Nebraska-Western Iowa	AO-86-A48-R01
1068 Upper Midwest	AO-178-A46-R01
1079 Iowa	AO-295-A42-R01
1093 Alabama-West Florida	AO-386-A12-R01
1094 New Orleans-Mississippi	AO-103-A54-R01
1096 Greater Louisiana	AO-257-A41-R01
1097 Memphis, Tennessee	AO-219-A47-R01
1098 Nashville, Tennessee	AO-184-A56-R01
1099 Paducah, Kentucky	AO-183-A46-R01
1106 Southwest Plains	AO-210-A53-R01
1108 Central Arkansas	AO-243-A44-R01
1124 Pacific Northwest	AO-368-A20-R01
1126 Texas	AO-231-A61-R01
1131 Central Arizona	AO-271-A30-R01
1131 Southwestern Idaho-Eastern Oregon	AO-380-A10-R01
1138 New Mexico-West Texas	AO-335-A37-R01

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reopened public hearing on proposed rulemaking.

SUMMARY: A hearing held a year ago on the above-listed orders is reopened on the basis of an August 4, 1992, ruling by the U.S. District Court Judge for the Western District of Kentucky at Louisville. The hearing is being reopened for the limited purpose of addressing what yield factor should be incorporated in the Class III–A price formula for the New England, Middle Atlantic, and Pacific Northwest markets where pricing changes have been tentatively adopted.

DATES: The hearing will reconvene at 9 a.m. local time on August 20, 1992.

ADDRESSES: The hearing will be held at the Old Colony Inn, North Washington and First Streets (625 First Street), Alexandria, Virginia 22314 (703) 548–6300.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing issue on small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

It is noted that the original hearing notice for this proceeding listed 31 milk orders. The initial number of markets involved has been reduced by two as a result of the consolidation of three southwest markets (Lubbock-Plainview, Rio Grande Valley and Texas Panhandle) into a new single order designated as the New Mexico-West Texas marketing area.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33396).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice is hereby given of a reopened public hearing to be held in response to an August 4, 1992, ruling by the U.S. District Court for the Western District of Kentucky at Louisville. The reopened hearing will begin at 9:00 a.m. local time on August 20, 1992, with respect to the appropriate yield factor that should be incorporated in the Class III–A price formula for the New England, Middle Atlantic, and Pacific Northwest markets

where Class III–A pricing changes have been tentatively adopted.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the single limited issue identified by the U.S. District Court and any appropriate modification to the tentative marketing agreements and the orders. There is no proposed amendment that has received the approval of the Secretary of Agriculture.

Last summer a hearing was held to consider the establishment of a separate class and price (III–A) for milk used to make butter and nonfat dry milk under 31 orders. The intent of the proposal by operating cooperatives was to price such milk on the basis of market prices for butter and nonfat dry milk rather than the currently used Minnesota-Wisconsin price.

The Department issued a tentative decision on this issue last December, adopting the new pricing for nonfat dry milk only and for just three orders—New England, Middle Atlantic, and Pacific Northwest. Because of the emergency nature of the issue, a tentative decision was issued so that the pricing changes could be implemented temporarily while public comments were being received on the decision.

The price changes were blocked, however, when a major cooperative in the Southeast obtained a temporary restraining order. On August 4, 1992, Judge Charles R. Simpson III of the U.S. District Court for the Western District of Kentucky at Louisville issued an opinion and order regarding the continuation of the restraining order. The Judge ruled that the Department's adoption of the new Class III–A price for three orders was legally valid but that the Department erred procedurally in the manner in which it arrived at the yield factor that was incorporated in the Class III–A price formula.

On this basis, the Court enjoined the Department from implementing the price changes until all interested parties have been given a further opportunity to address the question of what the yield factor in the Class III–A price formula should be. The most practical way to accomplish the Court's intentions is to reopen the hearing. Since the proper yield factor is the only matter that the Court believes needs to be addressed, the reopened hearing is therefore being limited to this single issue for the three markets where pricing changes were tentatively adopted.

Evidence also will be taken to determine whether emergency marketing conditions exist to such an extent that expedited action is warranted. Because of the emergency nature of this issue, only limited advance notice of this hearing is being provided to interested parties.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with six copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, and 1138

Milk marketing orders.

The authority citation for the aforesaid 7 CFR parts continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Copies of this reopened hearing notice may be obtained from any market administrator or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Dairy Division, Agricultural Marketing Service (Washington office only); Offices of the Market Administrators for the aforementioned Marketing Areas.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: August 11, 1992.

Daniel D. Haley,

Administrator.

[FR Doc. 92–19480 Filed 8–13–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1209

[FV–91–276A]

RIN 0581–AA49

Mushroom Promotion, Research, and Consumer Information Order; Amendment to Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to Referendum Order.

SUMMARY: This action amends the referendum order which was published in the June 10, 1992, issue of the **Federal Register**. It changes the voting period for the referendum during which mushroom producers and importers will vote on whether the Mushroom Promotion, Research, and Consumer Information Order will become effective. The voting period has been rescheduled for August 24, 1992, through September 14, 1992.

DATES: A referendum shall be conducted from August 24, 1992, through September 14, 1992.

ADDRESSES: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2533–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard Schultz at the above address or telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Proposed Rule published in the October 4, 1991, issue of the **Federal Register** [56 FR 50283]; Proposed Rule and Meeting Notice published in the January 15, 1992, issue of the **Federal Register** [57 FR 1666]; and Proposed Rule and Referendum Order published in the June 10, 1992, issue of the **Federal Register** [57 FR 24719].

The initial referendum order specified that the voting period for the referendum would be from July 22, 1992, through august 12, 1992. This voting period was postponed as a result of a temporary restraining order (TRO) requested by United Foods, Inc. (United). The period for the TRO has expired and United's attempts for a preliminary injunction were denied by the courts. Therefore, the voting period has been rescheduled

for August 24, 1992, through September 14, 1992.

The referendum order is hereby amended to read as follows:

It is hereby directed that a referendum be conducted among mushroom producers and importers to determine whether producers and importers favor the establishment of a national mushroom promotion, research, consumer information, and industry information program. Such a program would be implemented through a Mushroom Promotion, Research, and Consumer Information Order (order). the representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1990, through June 30, 1992. A referendum shall be conducted from August 24, 1992, through September 14, 1992.

The Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act) specifies that the Secretary of Agriculture (Secretary) will conduct a referendum among mushroom producers and importers to determine whether the order shall become effective. The Act further specifies that the order shall become effective, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456, are designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order, 7 CFR 1209.300–1209.307 shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known mushroom producers and importers. Persons who have produced or imported, on average, over 500,000 pounds of mushrooms that were marketed or imported annually for fresh use during the representative period are eligible to vote. Such persons shall establish their eligibility by providing information on the ballot concerning their volume of production or importation. Such information may be subject to verification. Should any eligible producer or importer not receive a ballot and related material, such producer or importer should immediately contact the referendum agents.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

Dated: August 12, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–19524 Filed 8–12–92; 1:22 pm]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–19]

General Electric Stockholders' Alliance, Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–20–19) from Betty Schroeder on behalf of the General Electric Stockholders' Alliance, et al. The petitioner requested that the NRC issue a regulation to require that a detectable odor be injected into the emissions of nuclear power plants and other nuclear processes over which the NRC has jurisdiction. The petition is being denied on the basis that the proposed action is not necessary because: (1) Current monitoring and emergency response procedures provide an adequate level of safety; (2) it would not result in any increased protection of the public health and safety and as a result would not meet the Commission's "Backfit Rule," 10 CFR 50.109; (3) the proposed action is not technically feasible; and (4) the injection of odors in detectable concentrations over the Emergency Planning Zone for a nuclear power plant or suitable area for other nuclear facility would likely be detrimental to the environment.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3638.

SUPPLEMENTARY INFORMATION:

The Petition

In a letter dated October 8, 1988, Ms. Betty Schroeder, Secretary of the GE Stockholders' Alliance, filed a petition for rulemaking with the NRC on behalf of herself, the Alliance, and "all the people in the country [USA] and all future generations." The petitioner requested that the NRC issue a regulation to require that a detectable odor be injected into the emissions of nuclear power plants and other nuclear processes over which the NRC has jurisdiction. The petition specified that the injected odor be similar to, but recognizably different from, the mercaptans used in natural gas.

Basis for Request

As a basis for the requested action, the petitioner stated that compliance with this requirement would immeasurably improve health and safety of the public by providing for early detection of radiation leaks, giving the public notice of the need to take protective measures. The petitioner recognized that nuclear facilities are required to maintain monitoring stations, but alleges that the accident at Three Mile Island demonstrates deficiencies in the capability to alert the public of dangerous releases. In addition, the petitioner claims that radiation plumes are erratic and unpredictable in their dispersion upon release because of varying weather and geo-physical characteristics of the terrain. Furthermore, the petitioner asserts that scientific studies prove that even the smallest amounts of ionizing radiation cause harmful health effects, stating that there is ample evidence that radiation causes increased infant mortality, genetic abnormalities, cancer and leukemia, and makes the body more prone to disease by "lowering" the immune system.

By example, the petitioner asserts that the natural gas industry requires inexpensive, non-toxic mercaptans (recognizable odors) to be injected into gas to help people detect gas leaks and to provide confidence that the use of gas is safe.

Public Comments on the Petition: Summary and Analysis

On February 1, 1989 (54 FR 5089), the NRC published a notice of receipt of the petition for rulemaking in the **Federal Register**. Interested persons were invited to submit written comments or suggestions concerning the petition by April 3, 1989. The NRC received 52 letters of comment in response to the notice: 28 letters from individuals with 3 opposed, 24 in favor, and 1 urging a feasibility analysis; 10 letters from industry and industrial organizations argued against the petition; 13 public interest groups responded with 1 opposed, 10 in favor, and 2 requesting that NRC examine the technical feasibility of such a requirement; and 1 local governmental entity in favor.

Many of the commenters in favor of the petition gave no reasons for their support. Some only provided statements, without giving the basis for their statements, that this requirement would provide assistance in detecting leaks and/or normal releases, that it would provide the public an advanced warning of leaks, or that it would enhance the public's ability to take protective actions or save lives. A number of commenters stated or implied that it would improve public health or safeguard the future. Two commenters suggested property loss and damage would also be avoided. One commenter stated that it would improve NRC awareness of public exposure. Several of the commenters who favored the petition felt it was important to assuage worries of the public, increase public awareness or aid public acceptance concerning nuclear power and radioactive emissions. One commenter, however, suggested that if an odorant were added to all emissions that it could mean the end of nuclear power. One commenter wanted to be able to detect leaks because she does not trust the government. One commenter also stated that if the NRC was unwilling to require the odorant, the NRC would be demonstrating to the public that it was hiding the danger from emissions. One commenter, who was apparently in favor of the petition, simply submitted an article which addressed lasting problems resulting from the accident at Three Mile Island. A few commenters seemed to be in favor of the odorant only for leaks or abnormal releases, a few clearly believed that information on all releases should be provided to the public in this way. One of these commenters contended that there was no proof that allowable levels of releases were not harmful. Two commenters stated that the public had a right and a need to know about all exposures. Although a few commenters gave an opinion that it would be technically feasible, none gave any information to support that statement other than noting the benefits of the use of mercaptans in natural gas.

None of the commenters presented any information which was convincing concerning the need for or the feasibility of the proposed requirement.

Although the petitioner's proposal, if it were feasible, would provide one method of warning the public, the means currently in place are more effective. As discussed further below, the comparison with mercaptans in natural gas breaks down when one goes beyond the simplest of factors. As for this method providing more information to the NRC on public exposures, current systems for measuring releases, estimating doses to the public, and reporting to the NRC are more accurate than the use of an odorant in emissions would be. As to the public's right and need to know what their exposures are, existing information, though not direct, is available to the public. For example, the NRC publishes an annual report entitled "Radioactive Materials Released from Nuclear Power Plants" compiled by Brookhaven National Laboratory for U.S. Nuclear Regulatory Commission, NUREG/CR–2907[1]. Various volumes cover different report years (each also summarizes previous data). Whether or not such a requirement in the long run would improve or diminish the public's faith in nuclear power would be difficult to predict; however, the question becomes irrelevant given the many arguments against the use of an odorant.

Three of the commenters that supported adding an ordorant to emissions also suggested the addition of a safe, non-toxic colorant.

This suggestion is outside the scope of the original petition. However, the Commission notes that although a colorant might have some small advantage in terms of the timing of any warning, most of the considerations applicable to the use of an odorant would also be relevant to a similar use of a colorant.

The commenters that opposed the petition presented significant reasons for their opposition. Many commenters stated that there would be no significant increase in the protection of public health and safety. A few commenters concluded that the requirement would have a negative impact on public health and safety and the environment. Some concluded this because of the difficulty of choosing an ordorant that would not be toxic when using the large quantifies that would be necessary. Others were concerned that the safety of plants would be reduced. Some of the reasons expressed for this second concern were that: An odorant would make it difficult for workers to respond in an emergency, problems of odorants at the plant would make a nuclear incident more probable, an odorant might be explosive in the containment or corrosive, an odorant might be detrimental to the functioning of emergency equipment, and modification to systems might be necessary.

A number of the commenters stated that existing effluent monitors and notification procedures are more feasible, more sensitive, and more orderly and that present regulations require the integration of instrumentation and public notification procedures that would allow an adequate time for protective actions. Some concluded that the use of an odorant would be unreliable and inaccurate.

Many of the commenters indicated that use of an odorant is not feasible and discussed the technical difficulties. The main points were that: (1) the quantity of odorant required for even a threshold detection in an Emergency Planning Zone (radius of about 10 miles) for a nuclear power plant is greater than is feasible, (2) odors could not be related to the amount of radiation because of different half-lives or different concentrations, and (3) it is technically untenable to label fission products with an odor. Some commenters discussed the differences between radioactive emissions and the use of mercaptans in natural gas. They pointed out that : (1) Natural gas is piped directly to and used in homes and buildings where there are no other warning devices and where a leak can create an immediate hazard to life and health, (2) mercaptans in natural gas is intended for the detection of very localized leaks, thus very small concentrations are used, and (3) mercaptans are gasses which dissolve into the natural gas. These commenters stated that the situation with radioactive emissions is drastically different with the objective of detecting releases to the unbounded outdoors for miles around.

Some commenters indicated the importance of a unique odor and discussed problems with the choice of an odorant. A number of commenters

[1] Copies of NUREGS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

including one in favor of the requirement pointed out problems with mercaptans or similar compounds. One commenter submitted extensive information concerning the toxicity of various mercaptan compounds. One commenter suggested peppermint or a specific perfume. Another commenter pointed out that even a usually pleasant odorant could be an allergen to some people.

Other problems pointed out by the commenters were: (1) The odorant would be overwhelming on site and possibly toxic to workers, (2) there would be a likelihood of false alarms as a result of similar odors or because of system malfunctions, (3) the length of time for the odor to reach the public would be unacceptably long, (4) the cost of the system would be an unnecessary financial burden to licensees, and (5) the public would have to be trained to recognize the odor. Some problems pertaining particularly to the use of an odorant in routine emissions were noted: (1) A problem of aesthetics for nearby residents, (2) olfactory fatigue, and (3) the possibility that the odor would become too familiar and not be responded to when appropriate.

Generally, the NRC agrees with those commenters who were opposed to the petition. Although there may have been a few minor overstatements or misstatements, the NRC agrees that all of the basic reasons given by the commenters for opposing the petition are valid.

In addition, two responders submitted that in accordance with 10 CFR 2.803, the NRC should not have instituted this proceeding on the basis that the petition was without merit and a waste of NRC, industry, and public resources and presumably not worth public comment.

The NRC's regulations require that a petition that meets the threshold requirements in 10 CFR 2.802(c) be docketed as a petition for rulemaking. Although publication for comment in the **Federal Register** is discretionary, it is not a burdensome procedure and affords members of the public an opportunity to participate in the Agency's deliberative processes that would not otherwise be available. Public comment is frequently of value in considering the merits of a petition, particularly where the petition raises an issue for the first time. Generally, the NRC prefers to err on the side of openness rather than invite public distrust.

Reasons for Denial

The NRC has considered the petition, the public comments received, and other related information and has concluded that the issues raised by the petition are without merit. The following is a discussion of the details of that conclusion.

The primary concern of the petitioner is a perceived need to improve the health and safety of the public by improving the detection of radiation leaks and providing the public with notification to take protective measures. In fact, for he case of nuclear power reactors, systems for the detection of radioactive leaks and the ability to quickly notify the public to take protection measures are in place as required by NRC regulations. A number of these measures were instituted based on lessons learned from the TMI accident.

Sensitive and redundant radiation monitors are located throughout nuclear power plants to provide detection and alarm capability at the point of release. These monitors measure, numerically and directly, the amount of radiation. In contrast, if detection of radiation were dependent upon identification of an odor by a person of site rather than an instrument, the detection would be delayed at least the time it would take to reach the first person offsite trained to recognize the odor. At best, the use of an odorant in conjunction with radioactive emissions would be an indirect and not a quantitative indication of the presence of radioactivity.

The petitioner contends that the accident at Three Mile Island demonstrated deficiencies in the ability to alert the population of dangerous releases [2]. After the accident, the NRC did conclude that the requirements for emergency preparedness needed to be significantly upgraded. Consequently, regulations elaborating the scope and contents of emergency plans for nuclear power plants were instituted. Included in these requirements are capabilities to promptly and accurately detect releases of radioactivity, as well as the potential for a release, and to notify the public within 15 minutes of the declaration of an emergency. Before a nuclear power plant is licensed to operate, the NRC must verify that the licensee's emergency plans and procedures are adequate to protect the public health and safety in the event of an accident. Further, the emergency planning for these licensees must be coordinated with local and State authorities. Also, emergency plans must be maintained and updated annually and exercises must be conducted annually (with State and local participation biannually). In addition, the NRC inspects licensees annually to ensure compliance with the regulatory requirements.

In summary, for the case of nuclear power plants, a system is already in place, which the NRC has previously determined provides adequate protection of the public health and safety. It is unlikely that the addition of an odorant to emissions could add any margin of safety to that provided by existing systems. Therefore, the addition of an odorant to the radioactive emissions from power reactors would not meet the Commission's Backfit Rule, 10 CFR 50.109.

In the case of NRC licenses other than those for power reactors, emergency preparedness is commensurate with the hazard. The potential radioactive hazards from most of these licensees are not sufficient to affect the general public. However, for those licensees with sufficient materials to meet the criteria for requiring an emergency plan, the appropriate surveys and monitoring for radioactive releases are required, as well as timely reporting of radioactive releases to the proper authorities. As in the case of power reactors, the existing required systems have been judged adequate and are superior to the indirect indication that would be provided by an associated odorant.

The petitioner specifically asserts that radiation plumes are erratic and unpredictable in their dispersion upon release because of varying weather and geo-physical characteristics of the terrain.

Plumes of radioactive substances behave in accordance with their physical and chemical characteristics. In this respect, they are no different from plumes of stable elements with the same physical and chemical characteristics, such as temperature, velocity, density, particle size, etc. The NRC, other Federal agencies, and licensees routinely predict the dispersion of radioactive plumes based on dispersion models (that are often computerized) that include factors such as weather and terrain. As with all modeling there are associated uncertainties. These models are used to predict the path of plumes and to enable public officials to recommend protective actions before the plume arrives at downwind, populated areas.

In contrast, the use of odorants would require the arrival of the plume in populated areas to initiate any protective actions. Precautionary evacuation, with virtually no radiation dose to the public, would not be an

[2] The petitioner should note that careful analysis of the actual radioactive release during the accident at Three Mile Island showed that the resultant dose to the public was comparable to that which would result from one or two trans-Atlantic commercial airline trips, and therefore, would not be considered dangerous.

option with the use of an odorant. An additional problem is that a "gaseous odorant may not have the same physical characteristics as the radioactive releases and thus may not follow the same path as the radioactive emissions. If this were the case, the detectability of the odorant may not be a good indicator of the presence or the concentration of radioactivity.

As discussed extensively by some of the commenters, the use of an odorant for the purpose of warning people of radioactive releases is not feasible. Most sources of potential releases are not in a form such that an odorant could be dissolved into or otherwise associated with the radioactive material in a way that they would be automatically released together. It would be necessary to rely on a system of detecting radioactivity, such as existing measuring devices, which would then trigger the addition of odorants to stack effluents or venting systems. It would not be possible to account for all sources of releases, although main stacks or vents would be the primary sources of releases. In part because of the complexity of implementing such a requirement, reliance on licensee compliance and government enforcement would still be necessary. Thus, the problem of lack of trust of a segment of the public in the licensees and the government could not be eliminated.

A further concern is that the concentrations of odorants used would have to be very high at the point of release in order to be detectable at any significant distance. Concentrations reaching people would vary considerably, depending on the distance from the source and other factors, such that odors would likely be overwhelming onsite and in some locations offsite and quite possibly toxic while being undetectable at other locations. As noted above, it would also be impossible for the chemical and physical characteristics of the odorant to match those of all the releases which are both gaseous and particulate. Thus, the concentrations of odorants would not remain proportional with the concentrations of contaminants. The concentrations of odorants would also not match the relative hazard of contaminants, because the radiotoxicity of various nuclides varies greatly.

The prospect of injecting an odorant into emissions of radioactivity also raises an environmental issue. If the odorant were used in connection with normal permitted releases as specifically suggested by some of the commenters, it would cause the institution of an objectionable and continual insult to the air quality in and downwind from licensed facilities. For example, it is highly likely that the addition of a mercaptan-like odorant to radionuclides used in the nuclear medicine sections of hospitals would be intolerable. Similarly, residents downwind from nuclear power plants would be subjected to a decreased quality of air. It would be difficult, if not impossible, to select an odorant which would not be toxic in the concentrations required. As discussed above, the addition of an odorant would provide little, if any, benefit to the protection of the public health and safety. Therefore, the detrimental effects on the environment outweigh the benefits, if any, of injecting an odorant into radioactive emissions from NRC licensed facilities.

The petition erroneously states that scientific studies prove that even the smallest amounts of ionizing radiation cause harmful health effects. On the contrary, there is a controversy in science on the health effects, if any, of very small doses of ionizing radiation. Nonetheless, the NRC regulates on the basis of the linear nonthreshold hypothesis which assumes that there is no threshold of dose below which there is no harm, i.e., that even the smallest dose are potentially harmful.[3]

Taking all the considerations above into account with respect to the early detection goal of the proposed requirement, the petitioner fails to recognize that more timely and sensitive methods of detection of radioactive emissions are already in place. Similarly, with respect to the ability to notify the public to take protective actions in a timely manner, the petitioner does not recognize that an effective method for notifying the public is already in place.

Therefore, there would be little, if any, increased benefit to the public health and safety as a result of the proposed requirement.

In conclusion, the NRC finds the petition without merit, and denies the petition.

Dated at Rockville, Maryland, this 27th day of July, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-19453 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

[3] The petitioner also erroneously states that the natural gas industry requires the injection of odors into gas for commercial and domestic use. In fact, it is the Federal government that requires the use of odorants in natural gas as stated in the regulations (49 CFR 192.625).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-173-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. This proposal would require installation of a placard to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, modification of the airbrake auto-retract function, and an associated temporary revision to the FAA-approved Airplane Flight Manual (AFM). This proposal is prompted by a report of the spool-down/roll-back and subsequent shutdown of one or more engines during the same flight. The actions specified by the proposed AD are intended to prevent the loss of sufficient power to sustain flight.

DATES: Comments must be received by September 14, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-173-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–173–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. The CAA advises that an operator reported the spool-down/roll-back and subsequent shutdown of one or more engines during the same flight on a Model BAe 146–200 series airplane.

Approximately 20 seconds prior to entering an air mass that was warmer than normal at 29,000 feet, thrust was reduced to bring the airplane to rough air penetration speed. Following this thrust reduction, but still prior to entering the warm air mass, airframe "ANTI–ICE ON" was selected for both the outer wing and tailplane. The engine and intake "ANTI–ICE ON" had been selected for some time prior to entering the warm air mass.

Within two to three minutes after the airplane entered the warm air mass, the engines spooled-down/rolled-back. Approximately five minutes following the encounter with the warm air mass, the fan speed on three of the four engines reduced as a result of the compressor bleed bands opening due to the combination of bleed air demand, warm ambient air, and the reduced thrust setting. A subsequent command for additional thrust failed to close the bleed bands, resulting in an engine overtemperature condition. The pilot took action to reduce the engine temperature. Consequently, the engines entered a sub-idle condition and eventually were shut down. Recently, the FAA has received additional reports of similar incidents.

This problem is caused by a combination of unusual environmental conditions, engine fuel control unit calibration, bleed band scheduling, and the demand for bleed air of airframe anti-ice systems. This condition, if not corrected, could result in the loss of sufficient power to sustain flight.

British Aerospace has issued Service Bulletin 11–97–01285A, Revision 1, dated April 3, 1992, which describes procedures for installation of a placard below the ice protection switches on the flight deck overhead panel stating that, when operating above flight level 250 with engine "ANTI–ICE ON," prior to the selection of airframe "ANTI–ICE ON," all engines must be set to an N2 of 90 percent minimum; thereafter, a minimum of 87 percent must be maintained.

The service bulletin also describes a modification involving changes to the electrical wiring to inhibit the thrust lever actuated airbrake auto-retract function. Accomplishment of this modification will enable the airbrake to be operated at high altitude to assist in descent when thrust levers are forward, in compliance with the placard. The CAA classified this service bulletin as mandatory.

The service bulletin also references Temporary Revisions (TR) to the "Limitations" and "Normal/Abnormal Procedures" Sections of the Airplane Flight Manual (AFM). These TR's, which are associated with the modification described previously, are identified as follows: TR22 (for Model BAe 146–100A series airplanes), TR28 and TR33 (for Model BAe 146–200A series airplanes), and TR12 (for Model BAe 146–300A series airplanes). These TR's describe new limitations and normal/abnormal procedures for handling the airplane in icing conditions above 25,000 feet.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of a placard to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, modification of the airbrake auto-retract function, and an associated temporary revision to the FAA-approved AFM. The installation and modification would be required to be accomplished in accordance with the service bulletin described previously.

Note: On April 8, 1992, the FAA issued telegraphic airworthiness directive T92–08–51, which addresses the portion of the unsafe condition described above that involves engine fuel control unit calibration and bleed band scheduling. This proposal addresses the portion of the problem that relates to the demand for bleed air of airframe anti-ice systems.

The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,175. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-173-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes; as listed in British Aerospace Service Bulletin 11-97-01285A, Revision 1, dated April 3, 1992; certificated in any category.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To prevent the loss of sufficient power to sustain flight, accomplish the following:

(a) Install a placard below the ice protection switches on the flight deck overhead panel to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, in accordance with British Aerospace Service Bulletin 11-97-01285A, Revision 1, dated April 3, 1992.

(b) Modify the airbrake auto-retract function, in accordance with British Aerospace Service Bulletin 11-97-01285A, Revision 1, dated April 3, 1992.

(c) Amend the FAA-approved Airplane Flight Manual (AFM) by inserting the applicable Temporary Revision (TR) in the Limitations and Normal/Abnormal Procedures Sections, as follows:

(1) For British Aerospace Model 146-100A series airplanes: TR 22.

(2) For British Aerospace Model 146-200A series airplanes: TR 28 or TR 33, as applicable.

(3) For British Aerospace Model 146-300A series airplanes: TR 12.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations or Maintenance Inspector, as applicable, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19381 Filed 8-13-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASO-9]

Proposed Alteration of Control Zone, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Orlando, FL Control Zone by adding and deleting arrival area extensions. A VOR/DME standard instrument approach procedure (SIAP) has been developed to serve Runway 7 at the Orlando Executive Airport. Concurrent with publication of the planned SIAP, the VOR Runway 13 instrument approach procedure will be cancelled. This proposed action would add an arrival area extension west of the airport to provide additional controlled airspace for instrument flight rules (IFR) aircraft executing the VOR/DME Runway 7 SIAP. The existing Runway 13 arrival area extension northwest of the airport would be eliminated.

DATES: Comments must be received on or before September 30, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-9, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of

Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the Orlando, FL Control Zone. A VOR/DME SIAP has been developed to serve Runway 7 at the Orlando Executive Airport. This proposed action would add an arrival area extension west of the airport to provide additional controlled airspace for IFR aircraft executing the SIAP. Concurrent with publication of the VOR/DME Runway 7 SIAP the VOR Runway 13 approach procedure would be cancelled. This proposed action also would eliminate the arrival area extension northwest of the airport. Control Zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control Zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

ASO FL CZ Orlando, FL [Amended]
Orlando Executive Airport, FL (lat. 28Z32'43" N, long. 81Z19'59" W)
Orlando VORTAC (lat. 28Z32'33" N, long. 81Z20'07" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4-mile radius of Orlando Executive Airport and within 3.6 miles each side of the Orlando VORTAC 254Z radial extending from the 4-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL Terminal Control Area (TCA).

* * * * *

Issued in East Point, Georgia, on August 4, 1992.

Don Cass,

Acting Manager, Air Traffic Div., Southern Region.

[FR Doc. 92-19383 Filed 8-13-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 92N-0072]

Public Information; Communications With Foreign Government Officials; Removal of Restrictions on International Cooperation on New Product Approval; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 24, 1992, the comment period for the proposed rule, which appeared in the Federal Register of June 26, 1992 (57 FR 28647). The document proposed to amend the regulations governing communication with foreign government officials to provide that the agency may disclose to foreign governments, under certain conditions, confidential commercial information submitted to FDA or incorporated into agency-prepared records. FDA is taking this action in response to a request for an extension of the comment period.

DATES: Written comments by September 24, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 26, 1992 (57 FR 28647), FDA published a proposed rule to amend its regulations governing communications with foreign government officials to provide that the agency may disclose to foreign government officials confidential commercial information submitted to FDA or incorporated into agency-prepared records, provided that certain conditions are met, and that such disclosure will not make the information available to the public. Interested persons were given until August 25, 1992, to respond to the proposal.

FDA has received a request for an extension of the comment period for an additional 60 days. After careful consideration, the agency is granting an extension of the comment period. However, the agency is granting a 30-day extension, rather than the requested 60 days. Accordingly, the comment period is extended to September 24, 1992.

Interested persons may, on or before September 24, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 10, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-19389 Filed 8-13-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 366

RIN: 1820-AA81

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Notice of extension of comment period.

SUMMARY: On July 10, 1992, the Department of Education published in he **Federal Register** an advance notice of proposed rulemaking (ANPRM) for the Centers for Independent Living program (57 FR 30866). The comment period for the ANPRM currently is scheduled to end August 24, 1992. In response to requests from the public, the Secretary extends the comment period from August 24, 1992 to September 8, 1992.

DATES: Comment period extended from August 24, 1992 to September 8, 1992.

ADDRESSES: All comments concerning the advance notice of proposed rulemaking should be addressed to Nell C. Carney, Commissioner, Rehabilitation Services Administration, room 3028 Mary E. Switzer Building, 400 Maryland Avenue S.W., Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: John Nelson, room 3326 Mary E. Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202–2741. Telephone: (202) 205–9362. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, D.C. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: August 10, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19413 Filed 8–13–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service proposes to amend the regulations governing the use and occupancy of National Forest System lands to minimize application expenses, streamline and make more efficient environmental analysis of special use proposals, provide the ability to use one-time payments for easements as presently used in the market place, limit certain liability requirements to amounts determined by a risk assessment, make certain definitions more explicit, and clarify direction on renewal of existing special use regulations. The intended effect is to reduce costs to proponents and the agency, expedite decisionmaking, and administer authorizations in a more "user friendly" manner by removing certain requirements deemed unnecessary and/or outdated. Public comment is invited.

DATES: Comments must be received in writing by September 28, 1992.

ADDRESSES: Send written comments to the Lands Staff (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director of Lands, 4th Floor, South Wing, Auditor's Building, 14th and Independence Avenue NW., Washington, DC, between the hours of 8:30 am. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202/205–1407) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, 202–205–1248, or William T. Svensen, Recreation, Cultural Resources, and Wilderness Management Staff, 202–205–1407.

SUPPLEMENTARY INFORMATION:

Background

In his 1992 State of the Union message, the President directed Federal agencies to review and revise existing programs to remove regulatory burdens on the public. Accordingly, the Forest Service has reviewed its existing regulations at 36 CFR part 251, subpart B—Special Uses which apply to authorizations for the use and occupancy of National Forest System lands. The agency concludes that there are several opportunities to eliminate unnecessary and burdensome provisions and to achieve cost efficiencies by streamlining the authorization application process, with particular emphasis on reducing costs of implementation of the National Environmental Policy Act, and by removing or revising certain requirements deemed unnecessary or outdated in administering existing permits.

Approximately 72,000 special use authorizations are in effect. These uses cover a wide range of activities from public and private uses to large-scale commercial facilities. Applicants for and holders of authorizations include individuals, organizations, businesses, and State, county, and local governments. Examples of authorized land uses include road rights-of-way serving private residences, apiaries, domestic water supplies, telephone and electric rights-of-way, municipal sewage treatment plants, ski areas, resorts, marinas, and public parks and playgrounds. About 6,000 applications are received each year for uses of National Forest System lands.

There are 15 statutory authorities authorizing special uses on National Forest System lands. These authorities, which are listed at 36 CFR 251.53, include statutes of broad application, such as the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976, and the Bankhead-Jones Farm Tenant Act of 1937. The basic authority of the Secretary to regulate the occupancy and use of National Forest System lands is 16 U.S.C 551.

Additionally, the Independent Offices Appropriations Act of 1952 and OMB Circular A–25 require holders of authorizations to pay for the use of the Federal land. The Federal Land Policy and Management Act of 1976 requires holders of rights-of-way authorizations to pay annually, in advance, the fair market value of the use of the Federal land and its resources. The 1976 Act also provides that fees may be waived, in whole or in part, under specified conditions when equitable and in the public interest.

Requirements of the National Environmental Policy Act, the Wilderness Act of 1964, the Archeological Resources Protection Act of 1979, the Federal Land Policy and Management Act of 1976, and Executive Orders 11990 (Floodplains) and 11988 (Wetlands) also bear directly on the issuance of special use authorizations.

The application for and administration of authorizations are also directly influenced by numerous court rulings that require the agency to incorporate decisions and findings into regulations to ensure that authorizations are legally sufficient. Several rulings have upheld the Secretary's authority to issue regulations governing the use and occupancy of the National Forest System lands and to require authorizations for such uses.

The current regulations ensure that the rights of all citizens regarding uses of National Forest System lands are protected. The special use regulations provide a means of legal control over those who would misuse or degrade National Forest System resources; protect health and safety of the public when using the services of commercial entities authorized to use the Federal lands; and ensure that environmental safeguards are employed and that authorized uses do not have adverse environmental effects on National Forest System lands.

This proposed rulemaking would not remove any of these basic safeguards and protections. The proposed rule does

propose efficiencies in the application and approval or denial process as well as in the administration of authorizations with significant cost savings to applicants, holders, and the Federal government.

Review of the regulations reveals an opportunity to make the issuance and administration of special use authorizations a less cumbersome and costly process. There are opportunities to clarify requirements, and remove overlapping or redundant direction, thereby improving a proponent's ability to understand and act efficiently when making application.

A section-by-section description of the proposed revisions follows.

Section 251.51 Definitions

This section of the current regulations defines some of the significant and commonly-used terms and phrases used in subpart B. However, other definitions are found throughout the text of subpart B. The proposed rule would place all definitions in one location. Further, four terms currently used in the text of the subpart are not defined; thus, the proposed rule would add definitions for Revocation, Sound business management principle, Suspension, and Termination. These revisions are minor, but collectively will improve the public's understanding and use of the regulations.

Section 251.54 Special Use Applications

This section of the current regulations sets forth the procedure by which the agency accepts and acts upon applications for special use authorizations, including pre-application discussions with the proponent, where to file, content, and agency response to applications. Currently, the regulation does not provide clear direction about accepting or denying an application or identifying the point where a decision is made to approve a special use. In addition, the current regulations make it difficult to deny a special use request from a proponent who does not meet certain minimum requirements prior to submission of a formal application. This has resulted in unnecessary paperwork and expenses for both the proponent and Forest Service.

In the proposed rule, this section would be retitled as "Special use application procedure and authorization," and would be revised to include a decisionmaking process which explicitly defines required activities and outcomes in the special use application and authorization procedure. The main feature of this proposal, found in proposed paragraph (a), is to institute a process of screening proposed uses prior to processing a formal application. This screening would result in a determination as to whether to accept or reject the application. Nine minimum requirements applicable to all special uses would be used to screen proposals prior to processing a formal permit application. After a proposed use passes all the screens, a "proposal" as defined in 40 CFR part 1508.23 (Council on Environmental Quality regulations) would exist. A discussion of the nine minimum requirements follows.

1. Proposed paragraph (a)(1)(i)—The use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws. The Forest Service is obligated to comply with applicable Federal law and regulation in managing the National Forest System. In addition, while State and local officials are responsible for enforcing State and local laws that apply to uses on National Forest System lands, an authorized officer has an obligation to ensure that all health and sanitation standards can be met. For example, an officer might need to restrict uses or surface disturbances to prevent contamination of water supplies.

2. Proposed paragraph (a)(1)(ii)—The use is consistent with the direction and guidelines of the applicable approved land and resource management plan or other approved management plan for the area or can be made consistent with the current plan by modification of the proposed use or through amendment of the plan. Required by the National Forest Management Act (NFMA) (16 U.S.C. 1600 *et seq.*), land and resource management plans allocate National Forest System lands and resources to various uses and set forth management direction and prescriptions to guide Forest Service employees in managing the lands. The plans are developed in accordance with the rules at 36 CFR part 219 and adopted with extensive public participation and comment. In addition to National Forest plans, occasionally there are distinct management plans required by statute establishing special areas within the National Forest System, such as scenic areas, wilderness, or wild and scenic rivers. Generally, these plans are incorporated as part of the applicable forest plans. NFMA requires that proposed uses be consistent with the forest plan.

3. Proposed paragraph (a)(1)(iii)—The use will not create a serious and substantial risk to public health or safety. This requirement is essential to protect not only visitors or users on National Forest System lands but also adjacent landowners and residents from unsafe or unhealthful effects of special uses conducted on National Forest System lands. The phrase "serious and substantial risk" is intended to limit the discretion of the authorized officers to findings of situations of very real risk to public health and safety.

4. Proposed paragraph (a)(1)(iv)—The use will not create an exclusive or perpetual right of use or occupancy. This requirement would be added to the rules to make clear what has been the longstanding congressional and administrative policy on occupancy and use—that a use authorization issued by the Forest Service, acting on behalf of the public, does not grant a permittee exclusive or perpetual right of occupancy of lands owned by the public. All standard clauses included in permits establish that uses are not exclusive (Forest Service Handbook 2709.11, Special Uses Handbook, Chapter 50—Terms and Conditions).

5. Proposed paragraph (a)(1)(v)—The use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System land. This requirement recognizes that special uses may conflict or interfere to a degree with Forest Service administrative use, scheduled or authorized uses, and use by adjacent landowners, but not unreasonably conflict with these pre-existing uses.

6. Proposed paragraph (a)(1)(vi)—The applicant does not have outstanding debts owed to the Forest Service under terms and conditions of a prior authorization. This requirement responds to a situation where a person formerly holding an authorization may reapply for an authorization at any time and the fact that the holder has shown bad faith under the prior authorization cannot be used to disqualify that applicant from receiving another authorization. This is not a prudent management practice. Private lessors would not issue a new lease to a lessee who owes back rent or amounts for damages. The Federal government should be equally prudent in administering the lands of the National Forest System.

7. Proposed paragraphs (a)(1)vii)–(ix)—The activity does not involve gambling or providing of sexually-oriented commercial services, even if permitted under State law; The use does not involve military or paramilitary training or exercises by private

organizations or individuals, unless such training is federally funded; The use does not involve disposal of solid waste or storage or disposal of radioactive or other hazardous material. These minimum requirements are activities already prohibited by agency policy (Forest Service Manual Chapter 2710) because they are inconsistent with National Forest System purposes, or represent an unacceptable environmental or safety hazard. These prohibited uses are proposed to be included in paragraph (a) because they have general applicability and future effect and thus are more appropriate in regulations than agency policy. In addition, these prohibitions on solid waste or hazardous material disposal respond to the liability risks to the Federal government associated with the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act.

A proposal passing this initial screening process would then be submitted by the proponent as a formal written application. Action on the application would lead to a decision to approve or disapprove a special use. The "approval" decision is the linchpin for National Environmental Policy Act compliance and the focus of the Federal action which is taken after a proposal is screened and it after is concluded that a valid need exists, that the special use would be in the public interest, and that the need may be fulfilled by a special use at the site requested.

The benefits of implementing this initial screening process would derive from efficiency improvements, thus reducing administrative costs by both the applicant and the agency. Screening would permit review of the proposal before the proponent or the Forest Service invests time and expense in providing information to accompany the application or in a detailed evaluation of the proposed special use. Proponents whose special use requests are rejected in the screening process would save money through the avoidance of the costs of preparing an application and its supporting documentation. For those proposals that meet the minimum requirements of the screening process, the proposed rule would require the authorized officer to provide information and guidance on the contents of the application; thus the proponent would know what information to submit and what the agency would use to evaluate the request. Applicants also would receive direct benefits in time savings derived from the screening process. The screening process would eliminate time-consuming and costly processing of applications that cannot meet minimum requirements, thereby allowing a faster agency response on those applications that pass the initial screening. The efficiency gains would be achieved with minimal additional administrative costs to the Forest Service.

Proposed paragraph (c) of this section, requiring applicants to obtain appropriate licenses or permits from other governmental entities as a condition of obtaining a Forest Service permit, would be revised to remove the requirement that applicants must file simultaneous application with the Forest Service since this requirement is redundant of requirements in § 251.50.

Paragraph (e), entitled "Application content," would be revised to correct references to numbered paragraphs appearing later. Paragraph (e)(3), setting forth requirements for describing the project, would be revised in the proposed rule to remove the requirement to describe the project's impact on the environment. This paragraph would also be clarified by requiring applications to include appropriate resource information in addition to maps. Paragraph (e)(4), requiring an environmental protection plan to be included with the application for permit would be removed. These requirements would be appropriately covered in proposed paragraphs (g) and (h).

Paragraph (i) of § 251.54 of the current regulations, describing factors leading to agency denial of applications, would be retitled "Receipt and denial of applications for special uses" to more accurately reflect the content of this paragraph, and would be redesignated as paragraph (f) in the proposed rule. The relocation of this paragraph in the proposed rule would place the denial of the application in the proper sequence of agency consideration of the application.

A new provision, paragraph (f)(1) in the proposed rule, would be added stating that an application which passes the initial screening set forth in paragraph (a) shall be received by the agency for consideration. This addition is made to show that an application is only considered received until the criteria in paragraphs (f)(2) (i)–(v) are met, at which time they are considered accepted.

Five of the six criteria for denying a special use application, listed in paragraph (i) of the current rule, would appear in paragraph (f)(2). Two of these criteria would be revised in the proposed rule. One criterion would be removed. Redesignated paragraph (f)(2)(i), which provides for denial if the use would be inconsistent or incompatible with the purposes for which the lands are managed, would be revised to add a reference to the nine screening criteria listed in paragraph (a)(1). Redesignated paragraph (f)(1)(iv), which provides for denial if the applicant does not or cannot demonstrate technical feasibility or financial capacity, would be revised to include the inability to demonstrate economic feasibility of the proposed use. The criterion that use would otherwise be inconsistent with applicable Federal and state laws would be removed because this requirement is already covered in redesignated paragraph (a)(1)(i).

The concluding undesignated sentence of paragraph (i) of the current regulations would be removed, thus eliminating the requirement to consider an alternative site when an application is denied. It is not appropriate for the agency to suggest alternative sites when considering an applicant's proposed site. This revision would reduce the time taken by the agency to respond to an application, thus allow faster response to the applicant.

A new provision, paragraph (f)(3) in the proposed rule, would be added stating that the decision to deny a special use application, based on the factors listed in paragraph (f)(2), would not constitute a "proposal" as defined by Council of Environmental Quality regulations and thus would not require the agency to prepare an environmental analysis and documentation. As previously noted, this change would avoid costly investment by the applicant and the agency when an application fails to meet the minimum requirements of this section.

Existing paragraph (f) of § 251.54, entitled "Processing applications," would be redesignated as (g) in the proposed regulations. Paragraph (f)(1) would be revised to remove requirements placed on the authorizing officer to complete environmental documentation requirements, consult with other parties, and take other actions necessary to evaluate an application. These provisions are being moved to proposed paragraph (g), (h), and (j) to achieve consistency with other revisions made in this section and because the evaluations called for would not be timely at this stage of action on the permit application. Again, it should be noted that this proposed revision does not represent a departure from or decrease in agency compliance with NEPA procedures.

A new paragraph (g)(3) would be added to provide guidance on

processing applications for planning permits. This provision would limit application information to that required to make a decision on issuance of a planning permit and make clear that a planning permit would not require preparation of an environmental assessment or environmental impact statement. This provision would be a useful reference to the categories of special uses suitable for exclusion from documentation in an environmental assessment or an environmental impact statement that are defined in agency administrative directives—Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15. It does not represent any change in agency environmental analysis and documentation requirements. If a proponent subsequently made formal application to develop the project, the proponent would at that time provide the detailed information required to evaluate the project and its environmental effects. This provision is aimed at applications for major commercial uses, particularly for recreational uses, such as resorts and ski areas. A discussion of the need for and benefits of this proposed revision follows under the description of revisions to redesignated paragraph (h).

Paragraph (g) of § 251.54, entitled "Special application procedures," would be redesignated as (h) under the proposed rule. This paragraph currently describes special procedures for handling applications for oil and gas pipeline and large electric transmission line rights-of-way. This proposed rule contains a technical amendment to set the heading of paragraph (h)(1) in italic type for consistency with other paragraphs. Also, the proposed regulations would add a third special type of application—major resort development. This provision would make a substantial change in the way an application for authorization for a major commercial development, such as a ski area, would be processed.

Currently, an application for a special use authorization for a major commercial development triggers the initiation of environmental analysis and documentation. This generally occurs before the proponent has fully defined the project, which would be done through a master development plan. As a result, the decision and accompanying environmental documentation may require the applicant to substantially revise the proposal, which, if done, would then require preparation of supplemental environmental documentation at considerable additional cost to the applicant and the agency.

The proposed revision would provide for a 2-step process. The decision to issue a permit for preliminary planning for major resort developments would be separated from the decision to approve or disapprove the special use permit for the development. A proponent with a proposal for a major development, after passing the preliminary screening process described earlier, would submit an application for a five-year planning permit to complete a master development plan. The planning permit would be separate from the application for special use and would not prejudice acceptance or denial of a special use permit for the development. On-the-ground activities associated with master development planning are usually minor and of the type that can often be categorically excluded from documentation in an environmental assessment or environmental impact statement. Consistent with proposed paragraph (j) of this section, only one decision requiring environmental analysis and documentation would be made regarding approval of the major development: approve, deny, or approve the development with specified modifications.

The benefits from this proposed change in the regulations would result from cost savings in eliminating unnecessary paperwork and reducing the time for planning and approval of a major development.

Paragraph (h) of the current regulations would be redesignated as paragraph (i). This paragraph describes the factors used to deny a special use permit application for distribution of noncommercial printed material or for a group event for the public expression of views. No substantive revisions are proposed to this subsection.

A new paragraph (j), entitled "Action taken on accepted applications," would be added by the proposed rule. It would provide guidance for the action to be taken by the Forest Service when processing an application. It is at the point of acceptance of a formal application that environmental analysis and documentation occurs. The proposed provision would clarify that the decision to be made in considering a special use application would be: (1) To approve; (2) to deny; or (3) to approve with modification. By specifying the range of decisions available, the proposed rule would result in better focused environmental analysis and documentation with less time and expense required to evaluate the special use application. This proposed change would enable the agency to more clearly define in the environmental analysis the purpose and need of the project to which the agency is responding. This approach is modeled on that taken by other Federal agencies, notably the Federal Energy Regulatory Commission (FERC) and the Corps of Engineers ("Corps"). [For the Corps procedures, see 33 CFR part 325, Appendix B (1988), as well as Sylvester v. Army Corps of Engineers, 871 F.2d 817 (9th Cir. 1989). For FERC's procedures, see 18 CFR part 380, as well as North Carolina v. City of Virginia Beach, 951 F.2d 596 (4th Cir. 1991).] This paragraph also would provide that the authorized officer could join several applications involving the same or similar land uses together in one decision. This often occurs when seasonal activities on the National Forests, such as placement of bee hives or harvesting of fishing worms, result in a large number of applications for the same use.

Paragraph (k), entitled "Authorization and reauthorization of a special use," would provide guidance on the issuance of the special use authorization following the decision to authorize the special use. This paragraph specifies that an authorized officer would issue one or more authorizations appropriate to the type of use to be authorized. The language also provides that special uses may be reauthorized at any time consistent with the decision that initially approved the use as long as the initial analysis is consistent with the current land and resource management plan and environmental documentation procedures.

Section 251.56 Terms and Conditions.

This section of the current rule sets forth the terms and conditions to be included in each special use authorization. Paragraph (d) prescribes the liability of the holder of an authorization. Paragraph (d)(2) would be revised to clarify requirements prescribing limits of liability for certain high hazard special use authorizations.

Holders of rights-of-way authorizations that are of high risk, such as powerlines, are liable under the current regulations for injury, loss, or damage (including fire suppression costs), without regard to negligence, up to $1 million should the holder's use and occupancy cause damage to National Forest System land and resources. This maximum amount of strict liability is usually incorporated into authorizations by the authorized officer without consideration of the risks associated with the location of the right-of-way. This means that the limit on strict

liability for a right-of-way through dense, mature trees could be the same as through an area of sparse shrubs in open land. This standard treatment without regard to the specific situation potentially creates inequities between holders of authorizations who must make appropriate financial arrangements for the strict liability.

To eliminate the potential inequity, the proposed revision would require the authorized officer to conduct a local risk assessment to establish the amount of strict liability associated with the use. This risk assessment would consider environmental conditions and values, historical fire data, the National Forest Land and Resource Management Plan, and other pertinent information. In no case would the strict liability of the holder be higher than $1 million for any one occurrence. The risk assessment approach ensures protection of the public while eliminating the potential for requiring a higher strict liability than is appropriate to the risk and would represent a savings to proponents whose risk is under the current $1 million maximum. Nothing is the proposed change would affect the limits of liability that might result from negligence.

Section 251.57 Rental Fees

This section of the special use regulations currently requires that holders of special use authorizations pay an annual rental fee in advance which is based on fair market value of the rights and privileges authorized, prescribes the conditions under which all or part of those fees may be waived, and the circumstances under which additional fees may be assessed. A recent amendment to the Federal Land Policy and Management Act of 1976 (43 CFR 1701 et seq.) allows payment of fees either annually or for more than one year at a time. The act allows holders who are private individuals (as opposed to commercial entities) whose annual fees are $100 or more the option of making annual payments or payments covering more than one year. Paragraph (a) of this section of the proposed rule would be revised to incorporate this statutory amendment, thus allowing a holder of a permit for which the annual fee is small to pay several years fees at one time, thus avoiding annual administrative costs. Savings to the agency also would result by avoiding annual billing costs.

The Forest Service currently administers about 5800 special use authorizations for large commercial operations (such as communication sites and rights-of-way for powerlines, telephone lines, and pipelines). These uses are authorized as permits requiring yearly payment of fees. The existing regulations allow the use of easements and leases to authorize such uses. An easement or lease conveys a limited right to occupy the land for a specified time and grants the holder rights (transfer, compensation, tenure) not available with permits. The authority to grant easements and leases for certain types of special uses is found in title V of the Federal Land Policy and Management Act of 1976 and is covered by the existing regulation. However, long-standing agency practice has been to use permits, not easements or leases.

Review of the rules and agency administration of these rules has led the agency to conclude that offering easements and leases for large commercial operations has substantial benefits for the holder and the government. A change in agency directives will be needed to provide for the use of easements and leases.

Under proposed paragraph (a), use of easements and leases instead of permits, as authorized by the Federal Land Policy and Management Act, would allow the holder to make a one-time payment of fees based on fair market value covering the life of the easement or lease. Reauthorization of these permits, and authorization of new uses as easements or leases would reduce the average number of payments per use authorization from 30 annual payments, for example, to 1 payment in the first year. The current regulations direct the Forest Service to reappraise the fee for each of these permits every five years over the life of the permit. Conversion to an easement or lease would reduce the number of appraisals by five for each permit. The process of reviewing an application for easements or leases would follow the same procedures for all proposed uses. The Forest Service would realize considerable administrative cost savings from reduction in billing expenses and appraisals. Additionally, the conversion from a permit to an easement or lease could reduce the administrative costs to the holder and could be a potential savings to the consumer. Further, easements or leases would have additional value to holders operating as licensed utilities. As opposed to permits, easements and leases are considered capital assets which earn a fixed return based on standards set by State public utility commissions. The capital asset value of an easement or lease is estimated to be two-tenths of 1 percent of the one- time payment amount.

The conversion from a permit to an easement or lease (which would occur as permits expire) would convey some additional rights to the holder. The fair market value of any additional rights would be realized in increased fees, resulting in increased returns to the Treasury and the taxpayer.

Finally, under the proposed rule current paragraph (g) of this section would be removed. This provision, which permitted a test of fee waivers on the Mark Twain National Forest, expired on December 31, 1990, and thus should be removed from the Code of Federal Regulations.

Section 251.60 Termination, Revocation, and Suspension

This section of the current regulations prescribes the conditions under which a special use authorization may be suspended, revoked, or terminated. The proposed addition of definitions for suspension, revocation, and termination in § 251.51 requires that paragraphs (b), (e), (f), and (h) of § 251.60 be revised to be consistent with those definitions. As revised, these paragraphs would clarify the confusion that exists over the use of the terms in the current regulation. For example, termination and revocation have been used as synonyms resulting in confusion. The proposed revisions would make it clear that termination is the cessation of a special use authorization under its own terms, while revocation would mean the cessation of a special use authorization by action of the authorized officer. Suspension would be defined as a temporary revocation. Changes in this section will contribute to the regulation's clarity and the public's and agency's understanding and use of the regulations.

Paragraphs (g) and (i) of § 251.60 would be revised to correct the reference to regulations relating to appeals of decisions relating to the occupancy and use of National Forest System lands. The appeal regulations were substantially revised on January 23, 1989 (54 FR 3362), and relocated to subpart C of part 251.

Section 251.61 Modifications

This section of the current regulation describes those situations under which the holder is required to modify an existing authorization and the information necessary to cause the agency to modify the authorization. The proposed rule would revise paragraph (c) to clarify that modifications for which the approval of the authorized officer is necessary are not limited to "maintenance or other activities" and would include all those which impact the environment, other users, or the public.

Summary

The President's direction to review and revise existing government regulations to remove burdens or promote economic growth has led the Forest Service to identify opportunities to improve its regulations for authorizing the use and occupancy of National Forest System lands. The agency's proposed rule seeks to streamline the application and decisionmaking process in authorizing special uses and achieve cost savings to applicants and holders of authorizations and the Federal government. The proposed revisions to the regulations would: (1) Establish a pre-application screening process to weed out proposals that do not meet minimum use requirements, (2) streamline and better focus the analysis requirements of the National Environmental Policy Act used when evaluating proposed uses, (3) allow the use of easements instead of permits which would allow one-time payment of fees rather than annual payments, (4) base the strict liability imposed on holders of authorizations for high-risk uses on risk assessments, and (5) make the regulations more "user-friendly" by clarifying certain provisions. Adoption of the proposed revisions to the special use regulations could be accomplished at minimal additional cost by the Forest Service.

The Forest Service invites individuals, organizations, businesses, and public agencies and governments to comment on this proposed rule. To aid in analysis of comments, it would be helpful if reviewers would key their comments to specific proposed sections or topics. Respondents should also know that in analyzing and considering comments, the Forest Service will give more weight to substantive comments than to simple "yes", "no", or "check off" responses to form letter/questionnaire submissions.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an annual effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. To the contrary, adoption of this proposed rule would have positive benefits to the economy by creating efficiency benefits to the Forest Service and special use proponents and holders. This rule has also been reviewed in light of the President's regulatory review guidance of January 28, and it has been determined that the expected benefits of this rule outweigh the expected costs to society, and that the rule is fashioned to maximize net benefits to society, and the rule provides clarity to the regulated community.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et.seq.*), and it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities as defined by that act. To the contrary, the efficiencies and cost savings to be achieved by this rule will benefit small entities who apply for special use authorizations.

This regulation also has been reviewed for its impact on private property rights in accordance with Executive Order 12630. No impacts on private property rights which might constitute a taking would result because these regulations apply to the discretionary use of Federally owned land.

Environmental Impact

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. The rule is procedural and sets forth the manner in which the agency will conduct its business operations related to evaluating and administering special use authorizations. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement. Moreover, the proposed rule would result in better focused environmental analysis and documentation and has no substantive effect on agency compliance with Council of Environmental Quality regulations.

Controlling Paperwork Burdens on the Public

This rule will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, it is proposed to amend subpart B of part 251 of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for subpart B continues to read:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.51, revise the definitions of "Easement" and "Lease" and add definitions for "Revocation," "Sound business management principle," "Suspension," and "Termination" in the appropriate alphabetical order to read as follows:

§ 251.51 Definitions.

* * * * *

Easement—a type of special use authorization, usually granted for linear rights-of-way, utilized in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and may be compensable according to its terms.

* * * * *

Lease—a type of special use authorization, usually granted for improvements requiring substantial capital investment for occupancy of specific sites of a non-linear nature, used in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and may be compensable according to its terms.

* * * * *

Revocation—the cessation of a special use authorization by action of an authorized officer prior to the end of the specified period of occupancy or use due to the holder's noncompliance with the terms of the authorization, failure to exercise the privileges granted, or for reasons in the public interest.

* * * * *

Sound business management principle—an accepted practice or method used to establish fees and charges. Examples include, but are not limited to, appraisals as a component of the process used to obtain the appropriate charge for a special use, fee schedules, competitive bidding, negotiation between the authorized officer and the applicant, and application of other economic factors,

such as cost efficiency, supply and demand and administrative costs.

* * * * *

Suspension—a temporary revocation.

* * * * *

Termination—the cessation of a special use authorization by operation of law or the occurrence of a fixed or agreed-upon condition, event or time without the necessity for any decision or action by the authorized officer, such as expiration.

3. In § 251.54, remove paragraph (e)(4); redesignate paragraph (e)(5) as (e)(4) and paragraphs (i), (f), (g), and (h) as (f), (g), (h) and (i) respectively; revise the section heading, paragraphs (a), (c), the introductory text to paragraph (e), paragraph (e)(3) and redesignated paragraphs (f), (g) introductory text, (g)(1) and (3), (h)(1) heading and (h)(3); and add new paragraphs (j) and (k) to read as follows:

§ 251.54 Special use application procedure and authorization.

(a) *Initial screening.* (1) When occupancy of National Forest System land for purposes other than the distribution of non-commercial printed material or for a group event for the public expression of views is desired, a proponent is required to contact the Forest Service office(s) responsible for the management of the affected land as early as possible in advance of the proposed use. Upon notice of or written application for a proposed use, the authorized officer shall screen the proposals to insure that the use meets the following minimum requirements applicable to all special uses:

(i) The use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable state and local health and sanitation laws.

(ii) The use is consistent with the direction and guidelines of the applicable approved land and resource management plan or other approved management plan for the area or can be made consistent with the current plan by modification of the proposed use or through amendment of the plan.

(iii) The use will not create a serious and substantial risk to public health or safety.

(iv) The use will not create an exclusive or perpetual right of use or occupancy.

(v) The use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System land.

(vi) The applicant does not have outstanding debts owed to the Forest Service under terms and conditions of a prior authorization.

(vii) The activity does not involve gambling or providing of sexually-oriented commercial services, even if permitted under state law.

(viii) The use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training is federally funded.

(ix) The use does not involve disposal of solid waste or storage or disposal of radioactive or other hazardous material.

(2) Proposed uses that appear to not meet all of the minimum requirements of paragraph (a)(1) (i)–(ix) of this section shall not be subject to further evaluation and processing. The authorized officer shall advise the proponent in writing that the use does not meet the minimum requirements. In the case where a written application has been submitted, the application shall be returned along with the written notice that the use does not meet the minimum requirements applicable to all special uses.

(3) For those proposals that appear to meet the minimum requirements, the authorized officer shall provide the proponent guidance and information on the following, to the extent practicable:

(i) Possible land use conflicts as identified by review of land management plans, landownership records, and other readily available information sources;

(ii) Application procedures and probable time requirements;

(iii) Applicant qualification;

(iv) Fees, charges, bonding and security requirements;

(v) Necessary associated clearances, permits, and licenses;

(vi) Environmental and management considerations;

(vii) Special conditions; and

(viii) Identification of on-the-ground investigations which will require temporary use permits.

(4) If requested by the proponent, the Forest Service, to the extent reasonable and authorized by law, will not disclose project and program information revealed during pre-application contacts.

* * * * *

(c) *Coordination of applications.* Authorizations for use of National Forest System land may be conditioned to require State, county or other Federal agency license, permit, certificate, or other approval document, such as Federal Communication Commission license, Federal Energy Regulatory Commission license, State water right, or county building permit.

* * * * *

(e) *Application content.* As a minimum, applications shall include the information contained in paragraphs (e)(1) through (4) of this section.

* * * * *

(3) *Project description.* Except where application for a permit for a major resort development, a project description, including map(s) and appropriate resource information, shall be required in sufficient detail to enable the authorized officer to determine the feasibility of the project or activity proposed, any benefits provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and the proposal's compliance with applicable laws, regulations and orders.

* * * * *

(f) *Receipt and denial of applications for special uses.*

(1) An application which passes the initial screening set forth in paragraph (a) of this section shall be received by the agency for consideration.

(2) An authorized officer shall deny issuance of an authorization, including group events not subject to paragraph (h) of this section, if that officer determines that:

(i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, with other uses, or with the minimum requirements of § 251.54(a)(1)(i)–(ix); or

(ii) The proposed use would not be in the public interest; or

(iii) The applicant is not qualified; or

(iv) The applicant does not or cannot demonstrate technical or economic feasibility of the proposed use or financial capacity to undertake the use and fully comply with the terms and conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is no person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the authorization.

(3) A special use application which does not meet the criteria established in paragraphs (f)(2)(i) through (f)(2)(v) of this section does not constitute a proposal as defined in 40 CFR 1508.23, and does not require environmental analysis and documentation.

(g) *Processing applications.* The authorized officer shall acknowledge in writing acceptance of an application.

(1) The authorized officer shall assess the applicant's qualifications and determine compliance of the proposal with applicable laws, regulations, and orders and other criteria established in paragraph (f) of this section.

* * * * *

(3) For planning permits, including those issued for a major resort development as described in paragraph (h)(3) of this section, the authorized officer shall only assess the applicant's financial and technical qualifications and determine compliance with other applicable laws, regulations, and orders. Permits for planning may be categorically excluded from documentation in an environmental assessment or environmental impact statement pursuant to Forest Service Handbook 1909.15.

(h) * * *

(1) *Oil and gas pipeline rights-of-way.*

* * * * *

(3) *Major resort development.* Proponents of a major resort development may submit an application for a 5-year planning permit. Applicants for this planning permit must include the information contained in paragraphs (e)(1) through (e)(2) of this section. Upon completion of a master development plan developed under a planning permit, proponents may then submit an application for a long-term permit to construct and operate the resort. This application must include, as a minimum, the information contained in paragraphs (e)(1) through (e)(4) of this section. Issuance of a planning permit does not prejudice approval or denial of a subsequent application for a special use permit for the development.

* * * * *

(j) *Action taken on accepted applications.* Except for applications for a planning permit, upon acceptance of an application for a special use, the authorized officer shall evaluate the proposed use for the requested site, including effects on the environment, and decide whether to: approve the proposed use; approve the proposed use with modifications; or deny the proposed use. A group of similar special uses may be approved in one decision. The authorized officer may request additional information as described in paragraph (e)(4) of this section. Special use applications that are denied are to be returned to the proponent with an explanation for the denial.

(k) *Authorization and reauthorization of a special use.* Upon a decision to approve a special use or a group of similar uses, the authorized officer may issue one or more special use authorizations as defined in § 251.51 of this subpart. Special uses may be reauthorized upon expiration so long as such use remains consistent with the decision that approved the special use or group of uses. If significant new information or circumstances have developed, appropriate environmental analysis must accompany the decision to reauthorize the special use.

4. In § 251.56 revise paragraph (d)(2) to read as follows:

§ 251.56 Terms and conditions.

* * * * *

(d) * * *

(2) Holders of special use authorizations for high risk use and occupancy, such as, but not limited to, powerlines, and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy, without regard to the holder's negligence, provided that maximum liability shall be specified in the special use authorization as determined by a risk assessment, prepared in accordance with established agency procedures, but shall not exceed $1,000,000 for any one occurrence. Liability for injury, loss or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

* * * * *

5. In § 251.57, remove paragraph (g), redesignate paragraph (h) as (g) and revise paragraph (a) to read as follows:

§ 251.57 Rental fees.

(a) Except as otherwise provided in this part or when specifically authorized by the Secretary of Agriculture, special use authorizations shall require the payment in advance of an annual rental fee as determined by the authorized officer.

(1) The fee shall be based on the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles.

(2) The authorized officer may require either annual payment or a payment covering more than one year at a time. Holders of authorizations who are private individuals may, at their option, elect to make either annual payments or payments covering more than one year, if the annual fee is greater than one hundred dollars.

* * * * *

6. In § 251.60, revise paragraphs (b), (e) through (i) to read as follows:

§ 251.60 Termination, revocation, and suspension.

* * * * *

(b) A permit may be suspended or revoked at the discretion of the authorized officer for reasons in the public interest.

* * * * *

(e) Prior to revocation or suspension, the authorized officer shall give the holder written notice of the grounds for such action and reasonable time to cure any noncompliance.

(f) Immediate suspension of a special use authorization, in whole or in part, may be required when the authorized officer determines it to be necessary to protect the public health or safety or the environment. In any such case, the superior of the authorized officer will arrange, within 10 days of request of the holder, for an on-site review of the adverse conditions with the holder. Following this review, the superior officer will take prompt action to affirm, modify or cancel the suspension.

(g) Except for suspension or termination of easements issued pursuant to § 251.53 (e) and (1) of this part all appeals from any decision of an authorized officer under this section shall be taken under 36 CFR part 251, subpart C of this chapter.

(h) The authorized officer may take actions to suspend or revoke easements issued pursuant to § 251.53 (e) and (1) of this part under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(i) The Chief may terminate any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089 (16 U.S.C. 534):

(1) By consent of the owner of the easement,

(2) by condemnation, or

(3) upon abandonment after nonuse by the owner of the easement for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon the owner's request made within 60 days after receipt of the notice, an opportunity to present relevant information in accordance with the provisions of 36 CFR part 251, subpart C of this chapter.

* * * * *

7. In § 251.61, revise paragraph (c) to read as follows:

§ 251.61 Modifications.

* * * * *

(c) A holder must obtain prior approval of the authorized officer for all activities that will impact the environment, other users, or the public.

Dated: August 10, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92-19371 Filed 8-13-92; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 920773-2173]

Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to designate critical habitat for the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) pursuant to the Endangered Species Act (ESA). The habitat proposed for designation includes (1) the Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta; (2) all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait; (3) all waters of San Pablo Bay westward of the Carquinez Bridge; and (4) all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge. In addition, the proposed critical habitat designation identifies those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The economic and other impacts resulting from this critical habitat designation, over and above those arising from the listing of the species under the ESA, are expected to be minimal. The designation of proposed critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species.

DATES: Comments must be received on or before October 13, 1992. Requests for a public hearing must be received on or before September 28, 1992.

ADDRESSES: Comments and requests for a public hearing should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213 at (310) 980-4015, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910 (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

Although winter-run chinook salmon are currently listed as threatened (55 FR 46515, November 5, 1990), NMFS published a proposed rule to reclassify the species as endangered on June 19, 1992 (57 FR 27416). Critical habitat was not designated at the time of listing since an analysis of the impacts of designation, as required by section 4(b)(2) of the ESA, had not been completed. In the final rule listing winter-run chinook salmon as threatened, NMFS indicated that deferral of the critical habitat designation was not considered detrimental to the conservation of the species since (1) section 7 consultations conducted by NMFS would identify any Federal actions that might harm the species including the modification or destruction of its habitat and (2) all prohibitions on taking the species would be in effect which would allow NMFS to treat actions likely to adversely modify or destroy the species' habitat as a take of the species. NMFS indicated that critical habitat would be proposed in a separate rulemaking following completion of the required analyses.

When NMFS published an emergency interim rule, August 4, 1989, (54 FR 32088) to list the winter-run chinook salmon as threatened under the ESA, portions of the Sacramento River were designated as critical habitat. The designation included a portion of the Sacramento River extending from Red Bluff Diversion Dam, Tehama County (River Mile 243) to Keswick Dam, Shasta County (River Mile 302), and included the adjacent riparian zones, the river water, and the river bottom. This portion of the Sacramento River contains almost all of the habitat where suitable conditions for spawning, egg incubation, and rearing of juvenile fish exist if water management strategies are implemented to maintain suitable water temperatures. This designation represented the minimum amount of habitat that NMFS believed was necessary to ensure the survival and development of spawned eggs and the successful rearing of juveniles during the period when the emergency rule was in effect.

During the period covered by the emergency listing, NMFS published a proposed rule to list the winter-run chinook as a threatened species under the ESA (March 20, 1990, 55 FR 10260). To avoid a hiatus in protection of the species until the formal listing process was completed, NMFS published a second emergency interim rule on April 2, 1990 (55 FR 12191) which included a designation of critical habitat identical to that included in the first emergency rule.

NMFS has completed an assessment of the economic impacts of listing the winter-run chinook salmon and designating critical habitat (Hydrosphere 1991). This assessment focused on identifying the economic consequences (costs and benefits) of implementing alternative water management strategies to achieve specific temperature and flow criteria for various alternative critical habitat designations. In addition, NMFS has prepared an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designation.

Critical Habitat Definition

Critical habitat is defined in section 3(5) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species." Areas outside the current range of a species' habitat can only be designated if a designation limited to the species' present distribution would be inadequate to ensure the conservation of the species. The term conservation, as defined in section 3(3) of the ESA, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

The criteria to be considered in designating critical habitat are specified

under 50 CFR 424.12. In making critical habitat designations, requirements that are essential to the conservation of species and that may require special management considerations or protection are considered. NMFS must consider requirements of the species including (1) space for individual and population growth, and for normal behavior, (2) food, water, air, light, minerals, or other nutritional or physiological requirements, (3) cover or shelter, (4) sites for breeding, reproduction, or rearing of offspring and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

In addition, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality or quantity, and vegetation and soil types.

Consideration of Economic and Other Factors

The economic, environmental and other impacts of a designation must also be evaluated and considered. NMFS must identify present and anticipated activities that may adversely modify the proposed critical habitat or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species. Because listing a species under the ESA provides significant protection to the species' habitat, the direct economic and other impacts resulting from critical habitat designation, over and above the impacts of the listing itself, may be minimal (see Significance of Designating Critical Habitat section of this preamble). In general, the designation of critical habitat only duplicates and reinforces the substantive protection resulting from listing.

Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the ESA and associated regulations. "Taking" as defined in the ESA includes harm to a listed species. Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors including breeding, feeding or sheltering.

Impacts attributable to listing also include those resulting from the duty of Federal agencies under section 7 to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat regardless of whether that habitat has been designated as critical.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict human activities within the area or mandate any specific management or recovery action. A critical habitat designation contributes to conservation of the species primarily by identifying critically important areas and describing the features within the areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the ESA, the only direct impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement, and does not affect strictly state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 404.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat also are likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation usually only duplicates the protection provided under the section 7 jeopardy provision. However, critical habitat may provide additional benefits to a species if areas outside the species' current range have been designated because Federal agencies also would be expected to consult on actions that occur in these areas.

A designation of critical habitat provides a clearer indication to Federal agencies as to when consultation under section 7 is required, particularly if the actions would not result in direct mortality or injury to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). Also, describing the essential features of the habitat assists in determining which activities conducted outside the designated area are subject to section 7 requirements (i.e., activities that may affect essential features of the designated area). For example, diversions of water upstream from a critical habitat area may affect the essential features of the designated habitat (e.g., water-flow) and would be subject to section 7 requirements.

Also, a critical habitat designation would assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. This is particularly true if there are alternative areas that would provide for the conservation of the species. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of critical habitat is that it helps focus Federal, state and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of proposal, and therefore, are not considered in the critical habitat designation process. Other Federal, state, and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features identified. If there are alternative areas that would provide for the conservation of the species, these alternatives are also identified. Second, the need for special management considerations or

protection of the area(s) or features is evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat is published in the **Federal Register** for comment. After considering comments on the proposal and impacts assessment, the final critical habitat designation is published within one year of the proposal. As new data become available, final critical habitat designations maybe revised using the same process.

A description of the essential habitat, need for special management, and impacts of designating critical habitat, as well as the proposed action, are described in the following sections for the Sacramento River winter-run chinook salmon.

Essential Habitat of the Sacramento River Winter-run Chinook Salmon

The winter-run chinook salmon is a unique population of chinook salmon that spawns in the Sacramento River and is distinguishable from the other chinook runs found in the river based on the timing of its upstream migration and spawning season. The biology of the winter-run chinook salmon is discussed in previous **Federal Register** notices including 52 FR 6041 (February 27, 1987), 55 FR 10260 (March 20, 1990), and 55 FR 46515 (November 5, 1990). These notices include information on the status of the species, its life history characteristics and habitat requirements as well as projects, activities, and other factors affecting the species. The current status of winter-run chinook salmon is presented in the EA prepared for this critical habitat designation and in the proposed rule to reclassify the species as endangered (June 19, 1992, 57 FR 27416).

It is likely that modification and loss of spawning and rearing habitat have been major factors contributing to the decline of the winter-run chinook salmon population in the Sacramento River. Essential elements of suitable spawning habitat for the species are the availability of clean gravel that provides a substrate for redd construction, adequate flow of oxygenated water through the spawning gravel to aerate the developing eggs, and water temperatures (between 42.5 and 57.5 °F) (5.8 and 14.12 °C) that allow successful egg development. Historically, winter-run chinook found and used this type of habitat in the cold spring-fed tributaries at the headwaters of the Sacramento River.

Construction of the Shasta and Keswick Dams as part of the U.S. Bureau of Reclamation's Central Valley Project blocked the winter-run chinook salmon's access to its historical spawning habitat in the headwaters of the Sacramento River. However, the operations of these dams also created new habitat for winter-run chinook by the release of cold hypolimnitic waters from Shasta Reservoir into the mainstem of the upper Sacramento River. During the late spring and summer months when winter-run chinook spawn, cold water released from Shasta and Keswick Dams may decrease ambient water temperatures downstream to about Red Bluff Diversion Dam and thus contribute to creating suitable spawning and rearing conditions in most normal water years. However, during dry years when less cold water is available for release from Shasta Dam, river temperatures below Keswick Dam are not as low for as long a period as they may be in normal water years. This temperature increase over time progressively reduces the availability of suitable spawning and rearing conditions for winter-run chinook salmon in the upper Sacramento River.

Winter-run chinook spawning occurs principally between Keswick Dam and Red Bluff Diversion Dam; however, the distribution of spawning adults in this river reach varies considerably between years depending on the size of the run, river temperatures, and operation of the diversion dam gates during the species' upstream migration. In recent years, raising the diversion dam gates from December 1 through April 1, has allowed migrating adults free passage upstream. About 61 percent of winter-run adults spawned between Keswick Dam and Ball's Ferry, 34 percent from Ball's Ferry to Red Bluff Diversion Dam, and 5 percent downstream of the diversion dam.

Spawning success of winter-run chinook highly depends on river water temperatures during the period of egg incubation and early fry development. Temperature requirements for chinook salmon have been documented from laboratory studies, and generally water temperatures of 56 °F (13.3 °C) or below are necessary for normal egg and fry development. Mortality of developing eggs and pre-emergent fry begins at 57 °F (13.8 °C) and reaches 100 percent at 62 °F (16.6 °C) (Boles 1988). Elevated temperatures can also adversely affect spawning adults, egg maturation and viability, and pre-emergent fry.

In general, suitable water temperatures for winter-run spawning and incubation only occur upstream of Red Bluff Diversion Dam. In most years, water temperatures downstream of the diversion dam are above the suitable range for egg incubation during the months winter-run chinook spawn. For example, Hallock and Fisher (1985) estimated that suitable temperature occurred downstream of the diversion dam only four times between 1967–1984.

Female winter-run chinook salmon also require proper spawning gravel sites for redd excavation when they are fully ripened. Spawning redd areas may vary in size between 1.25 and 15 square meters.

Spawning habitat in the upper Sacramento River has also been degraded by decreases in the rate of replenishment of gravel suitable for spawning, and this has been identified as a factor in the curtailment of the winter-run chinook run. Construction of Shasta and Keswick Dams precluded the recruitment of new gravel from the river and its tributaries above those dams, and gravel mining in tributary streams below the dams has slowed the recruitment of new gravel into the river. As a consequence, the amount of suitable spawning habitat has been decreasing. Since 1985, state and Federal agencies have conducted a spawning gravel replenishment program in the Sacramento in an attempt to remedy this problem.

Winter-run chinook require sustained high velocity water flows near the gravel surface to spawn successfully, and appropriate intra-gravel water flows to maintain adequate oxygen delivery, remove metabolic wastes, and allow emergence of alevins from the gravel. This flow is affected by depth, substrate porosity, and channel morphology. Significant decreases in flow during these spawning and incubation periods, particularly, can disrupt spawning activity, salmon redds, or result in reduced interstitial flow through spawning gravels that can suffocate developing eggs. Significant fluctuations in water releases from Keswick Dam, particularly reductions that decrease in-river flows during winter-run chinook spawning, incubation, fry development, and fry emergence, can adversely impact winter-run chinook salmon. Operational and structural limitations of the Anderson-Cottonwood Irrigation District Dam, and coordination of flow reductions with the Bureau of Reclamation through reduced releases at Keswick Dam can exacerbate these problems.

Since newly hatched chinook fry are small and consequently incapable of maintaining their position in fast currents, they usually are found in calm habitats characterized by fine sediments. As they become larger, they gradually use deeper and faster water associated with coarser substrates (Chapman and Bjornn 1969, Lister and Genoe 1970). Optimal temperature range for winter-run fry is 53.6 to 57.2 °F (12 to 14 °C), where maximum growth occurred at 55 °F (12.7 °C) (Boles 1988).

Studies of chinook salmon smolts in the middle reaches of the Sacramento River found higher densities in natural, eroding bank habitats with woody debris that may provide protection against predation (Michny 1988a). Studies of bank protection projects in the Sacramento River have demonstrated that juvenile salmon show a marked preference for non-riprapped areas over riprapped areas (Schaffter *et al.* 1983, Michny and Hampton 1984). Additional bank stabilization efforts that destroy or modify natural conditions can be expected to reduce further salmon rearing habitat.

Outmigrating chinook salmon smolts in estuaries generally feed in schools within saltmarshes, mudflats, and other intertidal habitats. Fall-run chinook in the Sacramento-San Joaquin Delta have been found to feed primarily on zooplankton. As the smolts increase in size, fish become a more important food item (Cannon 1982).

Successful initiation of upstream migration may depend on temporary increases in river discharge and relative onshore wind conditions to assist in olfactory recognition of home streams by adult chinook salmon (Banks 1969). A substantial increase or decrease in any of these conditions may adversely affect upstream migration (Hallock, *et al.* 1970, Bell 1973). Reversal of flows in the lower Sacramento-San Joaquin Delta resulting from export pumping at the Federal (Central Valley Project) and state (State Water Project) facilities can adversely affect upstream migrating adults by causing them to stray into the Delta rather than pass up the Sacramento River.

Physical and biological features that are essential for the conservation of winter-run chinook salmon, based on the best available information, include (1) unimpeded access from the Pacific Ocean to appropriate spawning areas in the upper Sacramento River, (2) the availability of clean gravel for spawning substrate, (3) adequate river flows for successful spawning, incubation of eggs, fry development and emergence, and downstream transport of juveniles, (4) water temperatures between 42.5 and 57.5 °F (5.8 and 14.1 °C) for successful spawning, egg incubation, and fry development, (5) habitat and prey free of contaminants, (6) riparian habitat that provides for successful juvenile development and survival, and (7) unimpeded passage of juveniles downstream from the spawning grounds to San Francisco Bay and the Pacific Ocean.

Need for Special Management Considerations or protection

In the areas proposed for critical habitat, NMFS has determined that certain physical and biological features may require special management considerations or protection. In particular, specific water temperature criteria, minimum instream flow criteria, and water quality standards represent physical features of the winter-run chinook's habitat that are essential for the species' conservation. Similarly, biological features of the designated critical habitat that are considered vital for winter-run chinook salmon include unimpeded adult upstream migration routes, spawning habitat, egg incubation and fry emergence areas, rearing areas for juveniles, and unimpeded downstream migration routes for juveniles.

To achieve the maximum conservation and recovery benefits for winter-run chinook salmon, the average daily water temperature in the Sacramento River should not exceed 56 °F (13.3 °C) between Keswick Dam and Red Bluff Diversion Dam from April 15 through September 30, and at no more than 60 °F (15.5 °C) from October 1 through October 31. Survival of winter-run chinook's developing eggs are adversely affected at temperatures above 56 (13.3 °C).

Similarly for maximum recovery, instream flows should be no less than 6,000 cubic feet per second (cfs) at Keswick Dam from April 15 through October 15. Flows below 6,000 cfs at Keswick Dam during this critical period may increase mortality to a level that is not acceptable. In addition, reductions in flows from 8,000 to 6,000 cfs at Keswick Dam should not occur at a rate of more than 1,000 cfs per day. Finally, instream flows in the Sacramento River should be maintained at levels necessary to ensure that a 500 cfs bypass flow occurs in the lower side channel between the fish bypass outlet at the Glenn-Colusa Irrigation District facility and the Sacramento River between July 31 and October 31. Absent unusual circumstances, the 500 cfs bypass flow in this area is considered the minimum necessary to ensure this portion of the winter-run chinook's critical habitat is not degraded.

Water quality is another essential feature of winter-run chinook habitat. In particular, dredging activities may degrade critical habitat used by winter-run chinook in San Francisco Bay and elsewhere. In the past, NMFS has evaluated dredging projects both in terms of their quantitative and qualitative impact on water quality. In general, small scale dredging projects, typically 100,000 cubic yards or less, were thought to have a minor impact while larger projects, especially projects involving contaminated sediments, were thought to have potentially significant adverse impacts on water quality. NMFS is attempting to evaluate and establish more specific criteria for use in judging the impact that dredging activities may have on this important habitat feature.

Management considerations and protection are not limited to activities conducted in the area proposed for designation as critical habitat. Activities that affect essential critical habitat features, regardless of their location, are a matter of concern. For example, a bank restoration project on the Sacramento River or in the Delta may degrade the associated habitat area utilized by winter-run chinook. Similarly, timber harvesting activities, authorization of pesticide use, highway and construction projects, and similar activities, may have the potential to modify or destroy the habitat and consultation is recommended.

This discussion of special management considerations and protective measures is provided to inform the public and to provide general guidance to Federal agencies. The recommended temperature and flow criteria have not been included in the regulatory text describing the critical habitat; rather, this discussion is to alert the public to recommendations that NMFS may make on a case-by-case basis as a part of the section 7 consultation process.

In addition, special considerations and protection for these and other habitat features will be evaluated in the development and implementation of a recovery plan for winter-run chinook salmon. If adequate protection cannot be provided through consultation or through the recovery planning process, separate management actions with binding requirements may be considered.

Activities That May affect the Essential Habitat

A wide range of activities may affect the essential habitat requirements of

winter-run chinook salmon. These activities include water management operations by the Bureau of Reclamation's Central Valley Project (e.g., Shasta and Keswick Dams, Red Bluff Diversion Dam, the Tehama-Colusa Canal, the Delta Cross Channel, and delta export facilities) that affect the Sacramento River and Delta, water management operations by the California Department of Water Resource's State Water Project (including export of water from the Sacramento-San Joaquin Delta) that affect both the Sacramento River and Delta, small and large water diversions by private entities such as the Anderson Cottonwood Irrigation District and the Glenn-Colusa Irrigation District that are located on the Sacramento River, bank restoration activities by the U.S. Army Corps of Engineers (Corps) in the Sacramento River and Sacramento-San Joaquin Delta, and Corps permitting activities that authorize dredging and other construction-related activities in the Sacramento River, Sacramento-San Joaquin Delta, and San Francisco Bay.

The Federal agencies that most likely will be affected by this critical habitat designation include the U.S. Bureau of Reclamation, the Corps, the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, the U.S. Navy, and NMFS. This designation will provide clear notification to these agencies, private entities, and the public of the existence of critical habitat for winter-run chinook salmon and the boundaries of the habitat and the protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies, and others as required, in evaluating the potential effects of their activities on the winter-run chinook salmon and its critical habitat, and in determining when consultation with NMFS would be appropriate.

Expected Impacts of Designating Critical Habitat

Under section 7 of the ESA, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of listed species' critical habitat. Also, takings of winter-run chinook salmon are prohibited under regulations issued when the species was listed as threatened.

This action will identify specific habitat areas that have been determined to be essential for the conservation of the winter-run chinook salmon and that may be in need of special management considerations or protection. This designation would also require Federal agencies to evaluate their activities with respect to the critical habitat of winter-run chinook salmon and to consult with NMFS pursuant to section 7 of the ESA before engaging in any action that may affect the critical habitat. Federal agencies must ensure that their activities are not likely to result in the destruction or adverse modification of this critical habitat.

Currently, Federal agencies active within the range of the winter-run chinook salmon are required to consult with NMFS regarding projects and activities they permit, fund, or otherwise carry-out that may affect the species since it is listed as threatened under the ESA. Thus, even without this critical habitat designation, Federal agencies would be required to consult with NMFS, in most if not all situations, if winter-run chinook habitat might be adversely affected since any action that is likely to affect the habitat of winter-run chinook would also be expected to affect the species. For this reason, additional consultations resulting from this critical habitat designation are unlikely.

Designation of critical habitat for winter-run chinook salmon is not likely to have any additional adverse economic impacts on Federal, state, or private activities beyond those that already occur as a result of listing a species under the ESA. Following designation of critical habitat, Federal agencies will continue to engage in section 7 consultations to determine if the actions they authorize, fund, or carry out are likely to jeopardize the continued existence of winter-run chinook salmon; however, with the designation they will also need to address explicitly impacts to the species' critical habitat as well. However, this is not expected to materially affect the scope of future consultations or result in greater economic impacts since the impacts to winter-run chinook habitat are already considered in section 7 consultations.

Hydrosphere (1991) evaluated the economic impacts of implementing various special water management alternatives (i.e., specific temperature and instream flow criteria within the geographically defined critical habitat) that NMFS believes would improve the critical habitat of winter-run chinook salmon and, therefore, benefit the species. NMFS is currently using these same general hydrologic attributes to determine whether proposed or existing actions are likely to result in jeopardy to winter-run chinook salmon. For this reason, it is difficult to separate the estimated costs of the critical habitat designation from the costs associated with listing the species and the taking prohibition. However, for the purpose of this analysis, costs associated with achieving the identified hydrologic attributes (e.g., minimum flow requirements and temperature goals) within the critical habitat designation were analyzed. The resulting changes in hydrology and associated economic costs or benefits were then estimated.

Some actions that would improve winter-run habitat were not included in the analysis conducted by Hydrosphere since they (e.g., the Shasta temperature control device) are already in the planning or financing stages and are expected to be implemented regardless of whether critical habitat for winter-run chinook salmon is designated.

An evaluation of costs associated with achieving specified hydrologic attributes, such as minimum flow requirements and temperature goals, within the designated critical habitat concluded that total economic benefits and costs would be about $82.5 million and $69.6 million, respectively, with an overall net economic benefit of $12.9 million (Hydrosphere 1991).

Proposed Critical Habitat; Essential Features

Based on available information, NMFS proposes to designate critical habitat that is considered essential for the survival and recovery of the winter-run chinook salmon and that requires special management consideration or protection. The critical habitat designation proposed by this rule includes areas that are currently utilized by winter-run chinook salmon including the Sacramento River, all waterways and bays westward of Chipps Island to San Francisco Bay, and San Francisco Bay.

Proposed specific critical habitat includes (1) the Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, (2) all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, (3) all waters of San Pablo Bay westward of the Carquinez Bridge, and (4) all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge.

Within the Sacramento River, this designation would include the river water, river bottom (including those areas and associated gravels utilized by winter-run chinook salmon as spawning substrate), and adjacent riparian zone used by fry and juveniles for rearing. In

the areas westward from Chipps Island, including San Francisco Bay to the Golden Gate Bridge, this designation would include the estuarine water column and essential foraging habitat and food resources utilized by winterrun chinook as part of their juvenile outmigration or adult spawning migration.

Although it is important, the proposed critical habitat does not include the open ocean habitat utilized by winter-run chinook because degradation of this portion of the species habitat, or other factors associated with the open ocean, do not appear to be significant factors in the decline of the species. In addition, existing laws appear adequate to protect these areas, and special management of this habitat is not considered necessary at this time. NMFS will continue to monitor activities in this area under its general ESA responsibilities although it is not included in the area proposed for critical habitat designation.

NMFS has not proposed that specific areas outside the current geographical area occupied by winter-run chinook salmon be included in this designation since these areas are not considered essential for conservation of the species. Although some may recommend removing dams (e.g., Shasta and Keswick) along the Sacramento River so that the former upriver habitat could once again be made available to winter-run chinook, NMFS has concluded that proper management of the existing habitat is sufficient to provide for the survival and recovery of this species.

Public Comments Solicited

NMFS is soliciting information, comments, or recommendations on any aspect of this proposal from all interested parties. NMFS will consider all information, comments and recommendations received before reaching a final decision. The ESA also provides for a public hearing on this proposal, if requested. Hearing requests must be made in writing and received within 45 days (see **DATES** and **ADDRESSES**).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. The designation of critical habitat only duplicates and reinforces the substantive protection resulting from listing; therefore, the economic and other impacts resulting from designation are expected to be minimal, and a regulatory flexibility analysis is not required.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of California. This determination has been submitted for review by the responsible State agency under section 3.7 of the Coastal Zone Management Act.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA, generally, are categorically excluded from the requirement to prepare an EA or an environmental impact statement. However, in order to more clearly evaluate the minimal impacts of the proposed critical habitat designation, NMFS has prepared an EA. Copies of the assessment are available on request (see **FOR FURTHER INFORMATION CONTACT**).

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List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 5, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Subpart C, which was reserved, is added to read as follows:

Subpart C –Critical Habitat for Fish

§ 226.21 Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha).

The following waterways, bottom and water of the waterways and adjacent riparian zones: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, all

waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge.

[FR Doc. 92-19373 Filed 8-13-92; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection

AGENCY: ACTION.

ACTION: Information Collection Request submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: This notice provides information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency, covered under the Paperwork Reduction Act (44 U.S.C. Chapter 35), currently under review by OMB. ACTION is requesting a review by OMB with final action by October 9, 1992 so that the approved form can be used to plan the first training conference beginning in the middle of November, 1992.

DATES: OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements received within 30 days from the date of publication.

ADDRESSES: Send comments to both—

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington, DC 20525, (202) 606–5245

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Office of Action Issuing Proposal: Office of Policy Research and Evaluation/ Program Analysis and Evaluation Division.

Title of Forms: ACTION Training Conference Evaluation.

Need and Use: ACTION's legislation requires it to provide technical assistance to agencies and non-profit organizations which utilize or desire to utilize volunteers in connection with carrying out the purpose of the Domestic Volunteer Service Act of 1973. Information gathered in this information collection will be used to make changes in the later training conferences and plan future training conferences for project directors of ACTION programs.

Type of Request: Reinstatement of a previously approved data collection for which appproval has expired.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: Once a year.

Estimated Number of Responses: 1,835.

Average Burden Hours per Response: 0.33 hours

Estimated Annual Reporting or Disclosure Burden: 606 hours.

Regulatory Authority: 42 U.S.C. 4993.

Dated: August 7, 1992.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 92–19393 Filed 8–13–92; 8:45 am]

BILLING CODE 6050–28–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

SES Performance Review Board

AGENCY: Department of the Interior.

ACTION: Notice of Senior Executive Service (SES) Performance Review Board Appointments.

SUMMARY: This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the Advisory Council's SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES performance appraisal plan for the Department has been adopted for use by the Advisory Council. The Performance Review Board will review the appraisal, award, and bonus recommendations for the SES members of the Advisory Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

DATE: These appointments are effective August 15, 1992.

FOR FURTHER INFORMATION CONTACT: J. Lynn Smith, Personnel Officer, Office of the Secretary (PSP), Department of the Interior, Washington, DC 20240, Telephone number: (202) 208–6702.

The names of the SES Performance Review Board members are:

Mr. Peter J. Basso (Career), Director, Office of Fiscal Services, Federal Highway Administration, Department of Transportation

Mr. Charles B. Respass (Career), Deputy Assistant Secretary for Operations, Department of State

Mr. Jerry L. Rogers (Career), Associate Director for Cultural Resources, National Park Service, Department of the Interior.

Dated: August 6, 1992.

John E. Schrote,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 92–19285 Filed 8–13–92; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92–138–1]

Procedures for Importing Animals Through the Harry S Truman Animal Import Center (HSTAIC)

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of application period and lottery for importation of animals through HSTAIC.

SUMMARY: We are giving notice of the date and location of the lottery for authorization for the use of the Harry S Truman Animal Import Center in calendar year 1993. We are also giving notice of the period during which applications for the use of HSTAIC will be accepted.

DATES: Applications for the use of HSTAIC in 1993, and accompanying deposits, must be received no earlier than September 1, 1992, and no later than September 15, 1992. The lottery for authorization to use HSTAIC during 1993 will be held October 6, 1992.

ADDRESSES: Completed applications and accompanying deposits must be sent to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Application forms may be obtained by writing to the same address, or by calling the telephone number provided under the heading "FOR FURTHER INFORMATION CONTACT." The

lottery will be held in the Epic Room, 7th Floor, Federal Building, 6505 Belcrest Road, Hyattsville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92, §§ 92.430, 92.431, 92.522, and 92.523 (referred to below as the regulations), set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida.

Because the demand for quarantine space at HSTAIC has traditionally exceeded the space available, the regulations provide that a lottery will be held each year during the first 7 days of October, to determine the priority of applications for the following calendar year. To be included in the October lottery, applications must reach the Import-Export Animals Staff no earlier than September 1 and no later than September 15 of the year of the lottery. Additionally, certain applications must include a deposit in the form of an irrevocable letter of credit, in the name of the applicant and in the amount of $50,000 payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service. Those applications which must include this deposit are identified in the regulations.

The regulations provide that applications received will be place in one of four categories, depending on the type of animal to be imported and the location from which the animal is exported. The categories are ranked in priority order, with applications in each category taking precedence over those in subsequent categories. In the event that the Import-Export Animals Staff, Veterinary Services, does not receive more than one application between September 1 and September 15, a lottery will not be held, and the Animal and Plant Health Inspection Service will grant exclusive right to use HSTAIC during the next calendar year in the order applications are received.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 37.2(d).

Done in Washington, DC, this 11th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19455 Filed 8–13–92; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–603]

Acetylsalicylic Acid (Aspirin) From Turkey; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on acetylsalicylic acid (aspirin) from Turkey. Interested parties who object to this revocation must submit their comments in writing not later than 30 days from the date of publication of this notice.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–0983 or 377–1767.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1987, the Department of Commerce ("the Department") published a countervailing duty order on acetylsalicylic acid (aspirin) from Turkey (52 FR 32156). The Department has not received a request to conduct an administrative review of the countervailing duty order on acetylsalicylic acid (aspirin) from Turkey for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than 30 days from the date of publication of this notice, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review by August 31, 1992, nor object to the Department's intent to revoke within 30 days of the publication of this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–19427 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–796–601]

Carbon Steel Wire Rod From Zimbabwe; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe. Interested parties who object to this revocation must submit their comments in writing not later than 30 days from the date of publication of this notice.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–0983 or 377–1767.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1986, the Department of Commerce ("the Department") published a countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292). The Department has not received a request to conduct an administrative review of the countervailing duty order on carbon steel wire rod from Zimbabwe for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no

interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than 30 days from the date of publication of this notice, interested parties, as defined in section 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary of Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review by August 31, 1992, nor object to the Department's intent to revoke 30 days from the date of publication of this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-19426 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Berkeley, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92-035.

Applicant: University of California, Berkeley, Berkeley, CA 94720.

Instrument: Brewster Angle Microscope.

Manufacturer: Nanofilm Technologic GmbH, Germany.

Intended Use: See notice at 57 FR 14388, April 20, 1992.

Reasons: The foreign instrument provides capability of imaging any type of two-dimensional objects (such as mono-molecular crystals or films) at the water surface.

Advice Submitted By: National Institutes of Health, June 2, 1992.

Docket Number: 92-040.

Applicant: U.S. Department of Agriculture, Greenbelt, MD 20770-1443.

Instrument: ICP Mass Spectrometer, Model PlasmaQuad PQ 2.

Manufacturer: VG Elemental, United Kingdom.

Intended Use: See notice at 57 FR 14388, April 20, 1992.

Reasons: The foreign instrument provides: (1) Sensitivity of 1.0×10^{-6} (low mass) and 5.0×10^{-7} (high mass) and (2) air-cooled radio frequency electronics for optimum stability and precision.

Advice Submitted By: National Institutes of Health, June 2, 1992.

Docket Number: 92-044.

Applicant: National Institute of Standards and Technology, Gaithersburg, MD 20899.

Instrument: Dead-weight Testing Machine for Hardness.

Manufacturer: Officine Galileo, Italy.

Intended Use: See notice at 57 FR 14388, April 20, 1992.

Reasons: The foreign instrument provides dead-weight applied force with uncertainty of less than 100 ppm and a vibration free loading mechanism.

Advice Submitted By: National Institutes of Health, June 2, 1992.

Docket Number: 92-048.

Applicant: University of California, Irvine, Irvine, CA 92717.

Instrument: Mass Spectrometer, Model Autospec.

Manufacturer: VG Instruments, United Kingdom.

Intended Use: See notice at 57 FR 15283, April 27, 1992.

Reasons: The foreign instrument provides: (1) Resolution to 60,000, (2) a fast scan magnet system (5 scans per second) and (3) an HPLC interface with LC-FAB.

Advice Submitted by: National Institutes of Health, June 2, 1992.

Docket Number: 92-049.

Applicant: University of Illinois at Chicago, Chicago, IL 60680.

Instrument: Extremely High Pressure Computer Controlled High Pressure Generator.

Manufacturer: Nova Werke, A.G., Switzerland.

Intended Use: See notice at 57 FR 15283, April 27, 1992.

Reasons: The foreign instrument provides pressure ranges of 0.1 to 400 megapascals and computer stabilized pressures to ± 0.1 MIIα.

Advice Submitted By: National Institutes of Health, June 2, 1992.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-19428 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 920114-2014]

Grant Funds; Materials Science and Engineering Laboratory

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Announcing availability of grant funds; materials, science and engineering.

SUMMARY: The purpose of this notice is to inform potential applicants that the Materials Science and Engineering Laboratory, National Institute of Standards and Technology (NIST), is continuing its Research Grants Program to academic institutions, non-federal agencies, and independent and industrial laboratories. Applications are now being accepted for grants in the areas of Ceramics, Metallurgy, Polymer Sciences, Neutron Scattering Research and Spectroscopy. (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research Standards"). Each applicant must submit one signed original and two copies of each proposal along with a Grant Application, (Standard Form 424 REV. 4/88), as referenced under the provisions of OMB Circular A-110 and 15 CFR 24.

DATES: Proposals will be received throughout the remainder of the year. Applicants should allow up to 120 days processing time.

ADDRESS: Proposals should be submitted to The National Institute of Standards and Technology, Materials Science and Engineering Laboratory, Building 223, room B344, Gaithersburg,

Maryland 20899; Attention: Patty Salpino. Each package should be clearly marked to identify the field of research.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to the following contact persons: George Birnbaum—(301) 975–5727 (Office of Intelligent Processing Materials), Mr. Sandy Dapkunas—(301) 975–6119 (Ceramics Division), Bruno Fanconi—(301) 975–6762 (Polymers Division), John Manning—(301) 975–6157 (Metallurgy Division—transformations, phases, microstructure and kinetic processes in metals and their alloys), Leonard Mordfin—(301) 975–6168 (Metallurgy Division—sensors for analytical models for metallurgical processes), Richard Ricker—(301) 6023 (Metallurgy Division—degradation of materials in their services environment), John Rush—(301) 976–6220 (Reactor Radiation Division).

SUPPLEMENTARY INFORMATION: As authorized 15 U.S.C. 272, the Materials Science and Engineering. Laboratory, conducts directly and through grants and cooperative agreements, a basic and applied research program supported by NIST. Approximately $500,000 will be available to support grants under this program. The Materials Science and Engineering Laboratory Grants Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent upon satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant.

Program Objectives

All grant proposals submitted must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. Office of Intelligent Processing of Materials, 851

The primary objective is to measure the far infrared (FIR) and mid-infrared continuum absorption of primarily nonpolar gases and liquids found in the atmospheres of the outer planets, in particular, gaseous and liquid CH4, and gaseous mixtures of N2 and CH4, and to analyze these data.

II. Ceramics Division, 852

Grants to supplement division activities in the area of ceramic processing, tribology, composites, machining, interfacial chemistry, and microstructural analysis.

III. Polymers Division, 854

Grants for synthesis of polymers for research purposes, and collaborative research efforts in which the contractor provides mechanical, electrical, optical, transport, or structure data on polymeric materials.

IV. Metallurgy Division, 855

Develop techniques to predict, measure and control transformations, phases, microstructure and kinetic processes in metals and their alloys.

V. Metallurgy Division, 855

Develop new and improved sensors and analytical models for metallurgical processes in order to facilitate the development and adoption of intelligent processing systems for materials.

VI. Metallurgy Division, 855

Develop techniques to predict, measure and control the degradation of materials in their service environment.

VII. Reactor Radiation Division, 856

Develop cold and thermal neutron research approaches and related physics and materials applications.

Proposal Review Process

Both technical value of a proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration. Proposals will be reviewed by a panel of individuals knowledgeable about areas covered by this request for applications.

Selection Criteria

The criteria to be used in evaluating the proposal include: Rationality (coherence of approach, relation to scientific/technical issues), Qualifications of Technical Personnel, Resources Availability, and Technical Merit of Contribution. Each of these factors will be given equal weight in the selection process.

Paperwork Reduction Act

The Standard Form 424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

Each applicant must submit a certification ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace Act of 1988, 15 CFR part 26, subpart F. Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with any application.

Applicants are reminded that a false statement may be grounds for denial or termination of funds, and grounds for possible punishment by fine or imprisonment. Any recipient/applicant who has an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Awards under the Materials Science and Engineering Laboratory Research Program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

The Materials Science and Engineering Grants Program does not directly affect any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372 is not applicable to the Materials Science and Engineering Grants Program.

Dated: August 7, 1992.

John Lyons,

Director.

[FR Doc. 92–19358 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–13–M

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C.

207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Bruce E. Mattson, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, Maryland 20899. Any request for information should include the NIST Docket No. for the relevant invention(s) as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 86–001; "Method for Production of Predetermined Concentration Graded Alloys", relates to a process for the production of a composition modulated alloy having a predetermined concentration in which alternating layers of at least two metals are successively deposited. The individual thicknesses of at least one metal's layers are varied in a predetermined manner.

NIST Docket No. 86–008; "Predetermined Concentration Graded Alloys" relates to a variety of composition modulated alloys with a plurality of alternating layers of at least two metals in which at least one metal's layer thickness is varied in a predetermined manner over the overall thickness of the alloy.

NIST Docket No. 87–026; Patent No. 5,103,682, "Ultra-sensitive Force Detector Employing Servo-stabilized Tunneling Junction" relates to a highly sensitive force detector using a tunneling junction as a strain gauge.

NIST Docket No. 88–022; Patent No. 5,104,478, "A Method for Making Single Crystals" relates to a method of producing large single crystals including single crystals of proteins.

NIST Docket No. 88–044; "Process for the Preparation of Fiber-Reinforced Ceramic Matrix Composites" relates to a process for the production of fiber-reinforced ceramic matrix composites. The process allows the continuous coating of a fiber with a slurry of a ceramic matrix composite material in an ultraviolet curing resin. The continuous coating process provides improved properties in the composites incorporating the fibers.

NIST Docket No. 90–002; "Tunnel-Stabilized Magnetic Reading and Recording" relates principally to methods and apparatus for recording data on and reading data from a magnetizable medium using a scanning tunneling technique. This invention replaces the conventional rigid probes used in scanning tunneling microscopy (STM) with compliant magnetic probe wherein the STM image is a convolution of magnetic forces and the surface topography of the magnetizable medium. Data can be written to the medium by increasing the tunneling current, reducing the scan rate, and/or increasing the magnetization of the magnetic tunneling tip in order to alter the local magnetic characteristics of the medium. The compliant probe of the device may also be employed for imaging the local surface magnetization of a magnetic member.

NIST Docket No. 90–014, "Matrix Modification in the Electrophoretic Separation of Nucleic Acids" is a method for enhancing the separation of polynucleotides or polypeptides of various chain lengths or a mixture of polynucleotides and polypeptides of various chain lengths using electrophoretic processes to sharpen sample component zones and produce maximum resolution of electrophoretically separated macromolecules by modifying the matrix of electrophoretic gel.

NIST Docket No. 90–016, "Method and Apparatus for Assessment of Surface Smoothness Using Reflected Energy" relates to a method and apparatus for remotely sensing the smoothness of a coated surface.

NIST Docket No. 90–021; "Localized Plasma Processing", relates to an apparatus and method for localized plasma processing of the surface of a unit. The device is especially useful when only a portion of a substrate requires processing or reprocessing and/or when in-situ monitoring of unit performance parameters and/or processing parameters is required.

NIST Docket No. 90–038; "Hard X-ray Magnification Apparatus and Method with Submicrometer Spatial Resolution of Images in One, Two or Three Dimensions", relates to an apparatus and method for using hard x-rays to obtain high resolution magnification of either the internal structure or surface feature details of a specimen at the submicron level in up to three dimensions.

NIST Docket No. 91–003; "Azeotropic Refrigerant Comprising Bis-(Difluoromethyl) Ether and 1,1,2-Trifluoroethane", relates to an azeotropic mixture for use as a refrigerant to replace R114 refrigerant. The azeotrope is specifically suited for use in water chiller equipment in maritime applications. It may also have applications in foam production.

NIST Docket No. 91–005; "Two-Dimensional, Josephson-Array, Voltage-Tunable, High-Frequency Oscillator", relates to a high frequency oscillator which is capable of emitting coherent power of predetermined frequencies. The oscillator operates without the application of external high frequency signals or a connection to a cavity resonator. The oscillator has advantages over one dimensional arrays in that phase locking is less likely to be affected by nonidentical junctions, greater power output can be realized, an output having a narrower line width is produced and impedance matching is relatively easy.

NIST Docket No. 91–011; "Object/Anti-Object Neural Network Segmentation" relates to a character recognition system which applies self-organizing and/or supervised learning network methods to the problem of segmentation.

NIST Docket No. 91–012; "Apparatus and Method for Evaporative Concentration of a Liquid Sample", relates to an inexpensive and efficient apparatus and method for the concentration of a liquid sample through evaporation.

NIST Docket No. 91–014; "Calibration System for Determining the Accuracy of Phase Modulation and Amplitude Modulation Noise Measurement Apparatus", relates to an apparatus and method for determining the error due to inherent PM and AM noise in a noise measurement device.

Dated: August 7, 1992.

John W. Lyons,

Director.

[FR Doc. 92–19407 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[Docket No. 920805–2205]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Notice of control date for entry into the handline fishery off the Island of Hawaii.

SUMMARY: This notice announces that persons who, after July 2, 1992, enter the Hawaii handline fishery, which occurs around Cross Seamount and around the four offshore NOAA weather buoys off the Island of Hawaii, will not necessarily be assured of eligibility for continuing participation if the Western Pacific Fishery Management Council (Council) prepares, and the Secretary of

Commerce approves, a program limiting entry or effort in the fishery in the future. This announcement is intended to alert potential participants who cannot document landings from State of Hawaii statistical reporting areas 15217, 15717, 15818, 16019, and 16223 by July 2, 1992, that their investment may be at risk should they enter the fishery after that date and the Council decides to limit effort. This announcement does not commit the Council to completing a plan to limit effort in the future, nor does it prevent any other date for eligibility to participate in the fishery from being proposed and implemented in the future.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, (808–523–1368); or Svein Fougner, Southwest Region, NMFS (310–980–4034); or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS (808–955–8831).

SUPPLEMENTARY INFORMATION: The pelagics fisheries based in Hawaii are undergoing rapid change. In the late 1980s, the longline fishery sector grew at a phenomenal rate, resulting in instability and the risk of harm to property and persons. To provide relief from this pressure and allow time for rational fishery management planning, a moratorium on new entry into the longline fishery was established. The planning is now underway for a program to replace the moratorium in 1994.

However, another pelagic fishery sector is now experiencing explosive growth. This is a handline fishery currently operating in the exclusive economic zone (EEZ) waters within the 1000 fathom curve around Cross Seamount and four NOAA weather buoys off the Island of Hawaii. Handline fishing gear means one or more fishing lines deployed by hand, usually less than 100 fathoms long, and having one baited hook per line. This gear is currently used in the surface handline fisheries for tunas and other species around Hawaii (known locally as "ika-shiba" and "palu-ahi"). Landings by this fishery have grown from a negligible amount in 1989 to more than 250,000 pounds in just the first 6 months of 1992. The number of trips grew from near zero in 1989 to 66 in the first 6 months of 1992. It is unclear whether this level of effort or landings can be sustained, whether the fishery (which harvests immature bigeye tuna) will impact the stocks or other fishery sectors, or whether the markets can accommodate continuing increases in landings. It also is uncertain whether there is a need to limit effort in or landings from the fishery to ensure a stable, healthy fishery.

At its December 1991 meeting, the Council was presented with testimony from fishery participants and was asked to evaluate the need for a moratorium on new entry into the fishery. The Council asked its Plan Development Team to examine the available data and provide recommendations to the Council. The Plan Team did not make any recommendations concerning the moratorium, but did indicate the need for yield-per-recruit analyses to determine the theoretical impacts of the new harvests on stock dynamics. The Team recommended that available data be examined in greater detail to examine fishery participation patterns, market impacts, and other changes that may be occurring due to the development of this fishery.

At its July 1–2, 1992, meeting, the Council considered the views of the fishermen, the data compiled from State of Hawaii landings records, and the recommendations of the Team, and concluded that it would be prudent to designate a control date for possible use in establishing eligibility for participation in a limited effort fishery. Experience has shown that discussion of limited entry can escalate the entry of new effort into the fishery in question. The Council already has established a moratorium on new entry into the longline fishery based in Hawaii, and has initiated a process for discussing limited entry alternatives and other regulatory options for other pelagic fishery sectors. In the Council's view, there is a risk of speculative entry into the fishery while the Council further analyzes the potential benefits and costs of limited entry alternatives. The control date is designed to discourage speculative entry in this period. Establishment of the July 2, 1992, control date does not commit the Council or the Secretary to any particular management regime or criterion for limiting effort in the handline fishery. After more information is available on the status of the stocks and the effort levels necessary to optimally harvest and market those stocks, the Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variable consideration to fishermen in the fishery before and after the control date. The Council also may choose to take no further action to control entry or access to the fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–19434 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Industry Advisory Subcommittee on August 27, 1992, beginning at 1 p.m., at the Ramada Inn, 76 Industrial Highway, Essington, DE., (telephone: 215–521–9600). The meeting is being held to develop surf clam and ocean quahog quota recommendations for 1993 and to review the proposed penalty schedule.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone (301) 674–2331.

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19433 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment to the 1992 Agreement Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

August 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 5, 1991, a notice was published in the **Federal Register** (56 FR

63716) announcing the 1992 agreement limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong.

In a Memorandum of Understanding dated July 29, 1992, the Governments of the United States and Hong Kong agreed to amend their Bilateral Textile Agreement of August 4, 1986, for the 1992–1995 agreement periods to establish new limits for women's and girls' cotton and man-made fiber trousers. The new limits for 1992 are listed below:

Category	New 1992 limit
Sublevels in Group II	
347/348	6,756,037 dozen of which not more than 2,980,551 dozen shall be in Category 347; not more than 5,289,495 dozen shall be in Category 348; not more than 6,056,037 dozen shall be in Categories 347-W/348-W [1] of which not more than 4,589,495 dozen shall be in Category 348-W.
648	1,021,598 dozen of which not more than 966,688 dozen shall be in Category 648-W [2].

[1] Category 347-W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[2] Category 648-W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19430 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with the Government of Qatar on Certain Cotton Textile Products

August 10, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories for which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 28, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Qatar with respect to cotton trousers, breeches and shorts in Categories 347/348, produced or manufactured in Qatar.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Qatar, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Qatar and exported during the twelve-month period which began on July 28, 1992 and extends through July 27, 1993, at a level of not less than 326,241 dozen.

A summary market statement concerning Categories 347/348 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 347/348, or to comment on domestic production or availability of products included in Categories 347/348, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Qatar.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Market Statement—Qatar

Category 347/348—Cotton Trousers, Slacks and Shorts

July 1992

Import Situation and Conclusion

U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, from Qatar surged to 354,857 dozen in the year ending May 1992, more than double the 156,614 dozen imported during the year ending May 1991. During the first five months of 1992, imports of Category 347/348 from Qatar reached 247,728 dozen, almost three times the 89,823 dozen imported in January-May 1991, and 26 percent greater than Qatar's total calendar year 1991 imports.

The sharp and substantial increase in Category 347/348 imports from Qatar is

causing disruption in the U.S. market for cotton trousers, slacks, and shorts.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton trousers, slacks, and shorts, Category 347/348, declined from 48,816,000 dozen in 1987 to 46,749,000 dozen in 1991, a decline of 4 percent. U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, increased from 29,132,000 dozen in 1987 to 39,448,000 dozen in 1991, an increase of 35 percent. Category 347/348 imports continue to increase in 1992, up 42 percent in the first five months of 1992 over the January-May 1991 level. The domestic manufacturers' share of the U.S. cotton trousers market fell from 63 percent in 1987 to 54 percent in 1991, a decline of nine percentage points. The ratio of imports to domestic production increased from 60 percent in 1987 to 84 percent in 1991.

Duty-Paid Value and U.S. Producers' Price

Approximately 75 percent of Category 347/348 imports from Qatar during the year ending May 1992 entered under HTSUSA numbers 6203.42.4050—men's woven cotton shorts; 6204.62.4020—women's woven cotton trousers other than of corduroy and denim and 6204.62.4055—women's cotton woven shorts. These trousers and shorts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19387 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 14, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Tool Box, Portable, 5140-00-226-9018
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky.

Mask, Surgical, 6515-00-448-5179.
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio.

Services

Document Processing, BATF National Tracing Center, 3361F 75th Avenue, Landover, Maryland
Nonprofit Agency: Sheltered Occupational Center of Northern Virginia, Arlington, Virginia.

Janitorial/Custodial

Defense Construction Supply Center, Columbus, Ohio
Nonprofit Agency: Licking-Knox Goodwill Industries, Inc., Newark Ohio.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-19444 Filed 8-13-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 14, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 19, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (57 FR 27440) of a proposed addition to the Procurement List. After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no know regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Grounds Maintenance, Centre County Memorial USARC, 1250 Fox Hollow Road, State College, Pennsylvania

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–19445 Filed 8–13–92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Subject Area Committee #2 of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: August 24, 1992.

TIME: 3 p.m. (EDT).

LOCATION: National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Subject Area Committee #2 of the National Assessment Governing Board will meet from 3 p.m. until adjournment, approximately 4:30 p.m. In this meeting the Committee will take final action on the math and science items developed for the 1993 assessment—approval of their inclusion in the field test instrument. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's's deliberations. The public is given less than fifteen days notice of this meeting since the committee's schedule and project timelines did not allow the meeting to be set earlier. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: August 11, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–19456 Filed 8–13–92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Request for Public Comment Relating to Maximizing the Economic Producibility of Oil From Shallow Shelf Carbonate (Class II) Reservoirs

AGENCY: Bartlesville Project Office and Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of request for public comment, announcement of public meeting and sources sought relative to DOE's Class II Oil Program opportunity notices.

SUMMARY: The U.S. Department of Energy, Bartlesville Project Office through the Pittsburgh Energy Technology Center, announces that it intends to issue two (2) competitive Program Opportunity Notices (PONs) in support of maximizing the economic producibility of oil from shallow shelf carbonate (Class II) reservoirs. Prior to the release of these solicitations the DOE is seeking public comment relative to the producibility problems associated with this reservoir class. A public meeting is scheduled.

DATES: The public meeting is scheduled for August 25, 1992 at 9 a.m. The scheduled release date for the solicitations is October 15, 1992.

ADDRESSES: The "DOE/BPO Class II Oil Program" public meeting will be held at the Sheraton Crowne Hotel and Conference Center, 15700 JFK Blvd., Houston, TX 77032, 713/442–5100. Copies of the solicitations may be obtained by writing to the Department of Energy, Pittsburgh Energy Technology Center, Attention Keith R. Miles, Contract Specialist, P.O. Box 10940, Mail Stop 921–118, Pittsburgh, PA 15234. Requests may be faxed to 412/892–6216.

SUPPLEMENTARY INFORMATION:

Program Opportunity Notice No.

DE–PS22–93BC14806

Title of Solicitation

Class II Oil Program: Near-Term Activities

Objective

The specific objective of this Program Opportunity Notice is to solicit applications to conduct cost shared projects in domestic shallow shelf carbonate reservoirs that lead to maximizing the economic producibility of the domestic oil resource. Using a focused technology transfer plan, these projects should extend the economic life of shallow shelf carbonate reservoirs through the improved understanding of the reservoir, the potential application of reservoir management technologies, and other extraction techniques. Field demonstration(s) may be proposed under this solicitation, but are not mandatory to Near-Term projects.

Program Opportunity Notice No.

DE–PS22–93BC14807

Title of Solicitation

Class II Oil Program: Mid-Term Activities

Objective

The specific objective of this Program Opportunity Notice is to solicit applications to conduct cost shared projects in domestic shallow shelf carbonate reservoirs that lead to maximizing the economic producibility of the domestic oil resource. These projects should demonstrate and transfer advanced technologies aimed at resolving specific producibility problems which will result in a significant increase of domestic reserves in shallow shelf carbonate reservoirs. Field

demonstration(s) must be included in all Mid-Term projects.

Advanced technologies, as defined in this PON, include advanced reservoir characterization techniques or tools, advanced reservoir management techniques, and advanced recovery technologies. The understanding of the interaction of the reservoir architecture and the recovery process is essential to the application of these advanced technologies. Advanced technologies represent a significant improvement in process effectiveness (i.e., greater sweep efficiencies or improved economics) or applicability over currently available technologies or represent a new technology not successfully demonstrated in the field.

Some examples of advanced technologies are: (1) Advanced Reservoir Characterization Techniques or Tools (e.g., cross borehole tomography, measurement while drilling, or three dimensional simulation), (2) Advanced Recovery Technology (e.g., mobility control agents (foams) with gas injection, or horizontal drilling), and (3) Advanced Reservoir Management Techniques (e.g., simulation, or fracture stimulation).

Request for Public Comment

The Department of Energy is requesting public comment regarding specific problems in the following three (3) advanced technology areas: (1) Reservoir characterization problems associated with defining the geological and reservoir engineering aspects of shallow shelf carbonate reservoirs (e.g., how to define the heterogeneous nature of the reservoir through detailed, integrated engineering/geological studies); (2) Operational problems related to the recovery processes commonly utilized in shallow shelf carbonate reservoirs (e.g., how to improve sweep efficiency in CO_2 injection projects by mobility control methods); and (3) Operational problems related to wellbore and production facilities and other reservoir management problems found in shallow shelf carbonate reservoirs (e.g., how to maximize artificial lift efficiency with CO_2-related corrosion and scale problems).

Specifically, what are the problems, how are they currently being addressed, and what new techniques are being developed to attack these problems in the future? Responses will be integrated into the two (2) Program Opportunity Notices which are planned for release on October 15, 1992.

Additionally, the Department intends to conduct a Public Meeting in Houston, Texas on August 25, 1992, 9 a.m. to discuss various aspects of the Class II Oil Program. Overnight reservations (Corporate lodging rate $69/night) for the meeting should be made directly with the hotel, and should reference the "DOE/BPO Class II Oil Program."

Organizations interested in providing comments, as well as those interested in being placed on the Department's source list for the upcoming solicitation, are encouraged to submit a written request to the address listed in this announcement. Public comments must include: the company name, address, and point of contact, including telephone number, and be submitted within 30 days from publication of this announcement for consideration by DOE.

Dated: July 29, 1992.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 92-19414 Filed 8-13-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, NREL Area Office; Grant Award to Clark Atlanta University

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Clark Atlanta University for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Clark Atlanta University has been conducting research to develop genetic engineering techniques to enhance the capability of fungi/bacteria to degrade lignocellulose to simpler materials. Successful completion of this research would advance the goal of converting biomass to useful chemicals and other products. A detailed understanding of the processes that control the reactivity and specificity of enzymatic reactions within the fungi/bacteria will provide the knowledge needed to exploit these reactions for technological applications. To date, the research has focused on the enzyme polyphenol oxidase (PPO) in the fungus *Coriolus versicolor*. This effort has been supported by the DOE Office of Industrial Processes.

The research conducted at Clark Atlanta has led to an increased understanding of how PPO is synthesized in the fungus, *Coriolus versicolor*, and how PPO is later secreted and degrades lignocellulose. This information was necessary before attempting to over-produce PPO by stimulating its synthesis and then regulating PPO secretion. The proposed one year effort will (1) complete the attempt to over-produce PPO; (2) establish the route and complete the regulation of PPO secretion; (3) develop batch culture techniques for *C. versicolor*; (4) develop methods for rapidly extracting PPO from the fungus and (5) extend the investigation to other enzymes secreted by *C. versicolor*.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity. Also, the applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical expertise. Funding in the amount of an estimated $43,000 is to be provided by DOE. The anticipated term of the proposed grant will be twelve months.

Issued in Chicago, Illinois, on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division

[FR Doc. 92-19417 Filed 8-13-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, NREL Area Office; Grant Award to The University of Pittsburgh

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Pittsburgh for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program. The BCTR program

seeks to improve operations and decrease energy use in the chemical and petrochemical industries.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The University of Pittsburgh has been conducting research for DOE to develop an understanding of biocatalysis at the molecular level. The biocatalytic reaction selected, electron transfer, is the focus of theoretical study. A detailed understanding of the processes that control the reactivity and specificity of enzymatic reactions will provide the knowledge needed to exploit these reactions for technological applications. This effort has been supported by the DOE Office of Industrial Processes.

Research conducted at the University of Pittsburgh in FY 1991 demonstrated the useful application of protein modeling to describe the chemical reaction routes (via electron transfer) that enzymes follow. Several modeling software packages were developed that were now being used by industry and university and government laboratories. The proposed one year effort will refine these modeling capabilities and apply them to the investigation of electron transfer reactions of selected protein systems. This will begin the model verification experimental component of this work. Ultimately, the validated model will be used to guide the research effort to design new enzymes with specific reaction capabilities and the genetic engineering of natural enzymes for enhanced reaction capabilities.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have an significant adverse effect on completion of the activity. Also the applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical expertise. Funding in the amount of an estimated $52,000 is to be provided by DOE. The anticipated term of the proposed grant will be twelve months from the effective date of the award.

Issued in Chicago, Illinois, on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-19416 Filed 8-13-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-737-000, et al.]

Pennsylvania Power & Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 7, 1992.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power & Light Co.

[Docket No. ER92-737-000]

Take notice that on July 21, 1992, Pennsylvania Power & Light Company (PP&L) tendered for filing a Supplement to the Capacity and Energy Sales Agreement between PP&L and Baltimore Gas and Electric Company.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Jackson Valley Energy Partners, L.P.

[Docket Nos. QF82-208-006 and QF82-208-007]

On July 30, 1992, Jackson Valley Energy Partners, L.P. (Applicant), submitted for filing an application requesting dual recertification of a facility as both a qualifying cogeneration and a small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The 15.1 MW facility is currently certified as a topping-cycle cogeneration facility and as a small power production facility [55 FERC ¶ 62,305 (1991)]. The instant recertification is requested due to changes in the ownership structure.

Comment date: September 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Newark Bay Cogeneration Partnership, L.P.

[Docket No. QF86-1014-005]

On July 29, 1992, Newark Bay Cogeneration Partnership, L.P. (Applicant) submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Newark, New Jersey. The Commission previously certified the facility as a qualifying cogeneration facility, Newark Bay Cogeneration Partnership, L.P., 52 FERC ¶ 62,049 (1990). The instant recertification is requested in light of a Plant Operating and Maintenance Agreement between Applicant and CEA Newark Bay Services, Inc.

Comment date: September 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Doswell Limited Partnership

[Docket No. EL92-37-000]

Take notice that on August 3, 1992, Doswell Limited Partnership (Doswell) pursuant to rules 206 and 207 of the Commission's regulations tendered for filing a Petition for Declaratory Order and Request for Expedited Consideration. Doswell states that it entered into two contracts (the "Power Purchase Agreements") with Virginia Electric and Power Company which it filed as rate schedules with the Commission and which the Commission accepted for filing and found "just and reasonable" by the Commission's order issued on February 28, 1990. Doswell seeks a declaration by the Commission of the rights and responsibilities of the parties under the Power Purchase Agreements.

Comment date: September 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19424 Filed 8-13-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

August 10, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 10766–001.
c. *Date Filed:* June 29, 1992.
d. *Applicant:* JDJ Energy Company.
e. *Name of Project:* Nimrod.
f. *Location:* On the Fourche La Fave River in Perry County, Arkansas.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Stewart Noland, PE, 5210 Sherwood Rd., Little Rock, AR 72207, (501) 661–9228.
i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.
j. *Comment Date:* August 28, 1992.
k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Nimrod Dam and would consist of: (1) A trash rack; (2) extension and bifurcation of an existing 15 foot diameter penstock; (3) a powerhouse containing two turbine generator units having a combined capacity of 3000 kilowatts; (4) a tailrace; (5) a switchyard; and (6) a transmission line. The transmission line is proposed to be interconnected to the local utility distribution system.
l. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days after the application is filed and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19376 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–620–000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

August 7, 1992.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket NO. CP2–620–000

Take notice that on July 29, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251 1478, filed in Docket No. CP92–620–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate certain facilities pursuant to section 7(c) of the Natural Gas Act that were previously constructed under section 311(a) of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations under the Natural Gas Act (18 CFR 284.3(c)) under its blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it is seeking section 7(c) authorization for pipeline, pipeline interconnects, taps and piping and flow equipment. United further states that the facilities are located in Iberville, St. Charles, West Carroll, Richland and Caoddo Parishes, Louisiana. It is indicated that the proposed facilities would enable United to provide transportation services under its blanket transportation certificate through all of its facilities to all current and potential customers.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP92–634–000]

Take notice that on August 6, 1992, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–634–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate a jurisdictional receipt point as a delivery point in order to effectuate delivery of natural gas to Virginia Gas Company (Virginia Gas), under its blanket certificate issued in Docket No. CP82–412–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee states that it currently transports natural gas for Virginia Gas pursuant to § 284.223 of the Regulations and pursuant to a contract dated January 1, 1992, as amended. It is indicated that Virginia Gas is proposing to evaluate the Early Grove production field in Washington County, Virginia as a storage project. It is also indicated that to accomplish their testing of the field, Virginia Gas has requested that an existing receipt used by East Tennessee in the transportation service be turned as necessary to allow for physical delivery of natural gas for storage field testing. East Tennessee states that it has agreed to deliver for testing up to 3,000 Mcf per day over a 30 to 60-day period. It is also indicated that upon completion of Virginia Gas' evaluation, Virginia Gas will resume deliveries to East Tennessee.

East Tennessee states that the operation of this point as a delivery point would have no impact on East Tennessee's peak day or annual deliveries. East Tennessee also states that the total quantity of gas to be delivered for Virginia Gas' account after establishment of the delivery point would not exceed the total quantities currently authorized and that the establishment of the delivery point is not prohibited by East Tennessee's tariff.

Comment date: September 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Public Service Company of Colorado

[Docket No. CP92–633–000]

Take notice that on August 5, 1992, Public Service Company of Colorado (Public Service), 1225 17th Street, Denver, Colorado 80202, filed in Docket No. CP92–633–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations under the Natural Gas Act (NGA) for a blanket certificate of public convenience and necessity authorizing Public Service to engage in the sale, transportation and assignment of natural gas in interstate commerce in the same manner that intrastate pipelines are authorized to engage in such activities by sections 311 and 312 of the Natural Gas Policy Act of 1978. (NGPA) and subparts C, D and E of part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Public Service states that it is a regulated local distribution company serving customers in the state of Colorado and whose rates, facilities and services are subject to the Colorado Public Service Utilities Commission (CPUC). It is also stated that Western Gas Supply Company (WestGas) is a wholly-owned subsidiary of Public Service engaging in the intrastate purchase, transmission and sale for resale of natural gas in Colorado and is a Hinshaw pipeline exempt from regulation under section 1(c) of the NGA. It is indicated that WestGas' rates, facilities and services are regulated by the CPUC.

Public Service states that on July 2, 1992, Public Service and WestGas filed a joint application with the CPUC requesting authority to merge WestGas into Public Service. Public Service states that as part of its application it indicated that it would adopt WestGas' tariffs currently on file with the CPUC. It is also indicated that Public Service

would also assume WestGas' contractual obligations as a legal consequence of the merger. Public Service states that it must obtain a blanket certificate in order to continue to provide service to customers currently receiving service under transportation agreements entered into pursuant to WestGas' blanket certificate issued by order issued October 26, 1982, in Docket No. CP81–345. It is indicated that the blanket certificate would apply only to service through the former WestGas transmission facilities and not to Public Service's distribution facilities.

Public Service states that it elects pursuant to § 284.123(b)(1) (ii) of the Commission's Regulations to use the rates contained in WestGas' current transportation rate schedules for intrastate service on file with the CPUC. It is also indicated that upon CPUC approval of the merger, Public Service would adopt WestGas' tariffs. Public Service states that during the twelve month period ending June 30, 1992, WestGas received 87,570,647 Mcf of natural gas within or at the boundary of Colorado, which was exempt from the Commission's Natural Gas Act jurisdiction by reason of section 1(c) of the NGA and the same volume of gas from all sources.

Comment date: August 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP92–625–000]

Take notice that on August 3, 1992, Panhandle Eastern Pipe Line (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed an application with the Commission in Docket No. CP92–625–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a sales service to Northern Illinois Gas Company (NI-Gas), an existing jurisdictional sales customer under Panhandle's FERC Rate Schedule LS–2, all as more fully set forth in the application which is open to the public for inspection.

Panhandle states that it seeks permission for and approval to abandon firm sales service to NI-Gas under Rate Schedule LS–2, because NI-Gas has elected to terminate this service effective November 1, 1992. NI-Gas has elected to convert to a firm transportation service under Panhandle's Rate Schedule PT-Firm on November 1, 1992.

Panhandle also states that it filed with the Commission revised tariff sheets at Docket Nos. RP91–52–000, RP91–53–000, and RP91–118–000 to recover take-or-pay costs from each of its customers, including NI-Gas. Additionally, Panhandle states that it has filed revised tariff sheets to recover portions of other costs in Docket Nos. RP92–125–000, RP92–127–000, and RP92–128–000. The portion of such costs attributable to NI-Gas have been described therein, and may be amended, supplemented, revised, or modified pursuant to Commission authorizations or as required by law. By this filing Panhandle does not waive or relieve NI-Gas from any of NI-Gas' cost responsibilities associated with these take-or-pay costs or any other costs properly attributed to NI-Gas. The abandonment authority sought herein is expressly conditioned on and subject to the ultimate recovery by Panhandle of all such residual costs associated with service to NI-Gas and NI-Gas' continuing obligation to Panhandle in connection therewith until extinguished by full payment, in addition to any other amounts payable pursuant to the Gas Sales Contract.

Panhandle also states that it does not propose to abandon any facilities herein.

Comment date: August 28, 1992, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19419 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–45–000]

Natural Gas Pipeline Co. of America; Conference

August 7, 1992.

Take notice that a conference will be convened in the above-captioned restructuring docket on Thursday, September 3, 1992, beginning at 9 a.m. The conference will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW. (intersection of Connecticut Avenue and Columbia Road, NW.), Washington, DC.

The conference is being held so that Natural Gas Pipeline Company of America (Natural) can explain to the Staff of the Federal Energy Regulatory Commission and the intervenors in this proceeding Natural's Order No. 636 Restructuring Proposal. Natural provided all parties to the proceeding a Summary of its Restructuring Proposal on July 7, 1992.

All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested

persons can call John Myler at (202) 208–0974.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19420 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–73–000]

Pacific Interstate Offshore Co.; Rescheduled Conference

August 7, 1992.

Take notice that the conference in the above-captioned docket to discuss Pacific Interstate Offshore Company's (PIOC) summary of its proposed plan for implementation of Order No. 636, previously scheduled for August 12, 1992, is cancelled and rescheduled to convene on September 29, 1992.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208–0708 or Marilyn Rand at (202) 208–0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19421 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–74–000]

Pacific Offshore Pipeline Co.; Rescheduled Conference

August 7, 1992.

Take notice that the conference in the above-captioned docket, to discuss Pacific Offshore Pipeline Company's (POPCO) summary of its proposed plan for implementation of Order No. 636, previously scheduled for August 13, 1992, is cancelled and rescheduled to convene on September 28, 1992.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208–0708 or Marilyn Rand at (202) 208–0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19422 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI92–69–000]

Universal Resources Corp., Application for Blanket Certificate With Pregranted Abandonment

August 10, 1992.

Take notice that on August 5, 1992, Universal Resources Corporation (Universal) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. Universal's application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before August 31, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Universal will not have to appear to be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19423 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4195–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 27, 1992 through July 31, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J65191–UT Rating EC1, Kamas Valley Grazing Allotment Management Plan, Implementation, Wasatch-Cache National Forest, Kamas Ranger District, Summit County, UT.

Summary

EPA had environmental concerns with the proposed action. EPA also believed that additional information is required concerning water quality to better document potential environmental impacts. EPA expressed concerns regarding information disclosing applicable water quality standards and impacts. EPA requested that the final document contain additional water quality information and expand the discussion on the selection of the preferred alternative over the environmentally preferred alternative.

ERP No. D–AFS–J65192–CO Rating EC2, Trout Mountain Analysis Area Timber Harvest, Road Construction and Aspen Management Plan Projects, Implementation, Trout and Decker Creeks, Del Norte Ranger District, Rio Grande National Forest, Rio Grande and Mineral Counties, CO.

Summary

EPA expressed environmental concerns regarding wetlands and water quality impacts. EPA requested additional analysis be incorporated into the final document on these issues.

ERP No. D–AFS–L65166–OR Rating EO2, Quosatana and Bradford Timber Sales and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach Ranger District, Curry County, OR.

Summary

EPA had environmental objections to the proposed project based on the lack of information on potential water quality standards violation and on air quality impacts analysis related to prescribed burning; the lack of a complete no action alternative; potential impacts to threatened species; the need for complete monitoring and mitigation discussion; and the need for a broader cumulative effects analysis.

ERP No. D–BLM–J67015–WY Rating LO, Mulligan Draw Gas Field Project,

Natural Gas Field Drilling, Operation, Abandonment and Reclamation, Approval, Right-of-Way Grants, COE Section 404 Permits and EPA RCRA Permits, Sweetwater County, WY.

Summary

EPA had no objections to the draft environmental impact statement.

ERP No. D-BLM-K67015-CA Rating EC2, Baltic Open-Pit Heap Leach Gold and Silver Mine Project, Construction and Operation, Plan of Operation, Reclamation Plan, Mining Reclamation Plan and Conditional Use Permit, Approval, Kern County, CA.

Summary

EPA expressed environmental concerns regarding potential project impacts to air quality and requested additional information in the FEIS on air, water quality and reclamation activities. EPA requested that coordination be undertaken with the local air pollution control district on the project's air quality impacts, air permits and mitigation.

ERP No. D-BOP-D81021-PA Rating EC2, Philadelphia, Pennsylvania Metropolitan Detention Center Construction and Operation, Site Selection near the existing Byrne Federal Courthouse, City of Philadelphia, PA.

Summary

EPA expressed environmental concerns with the proposed project based on hazardous waste mitigation and the insufficiency of alternative analysis.

ERP No. DS-DOE-K03007-CA Rating EO2, Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 Continued Operation, Updated Information, Elk Hills, Kern County, CA Kern County, CA.

Summary

EPA expressed objections regarding potential project impacts to regional air quality, groundwater resources, wildlife habitats, and threatened and endangered species. EPA suggested the development of a fourth alternative that would include provisions of the No Action Alternative in the near term and the provisions of the Preferred Alternative in the future. EPA also encouraged efforts to reduce the amount of hazardous materials used, and hazardous waste generated, from petroleum production operations.

ERP No. DS-USA-B11010-00 Rating LO1, Fort Huachuca, Fort Devens and Fort Monmouth Base Realignment, Transfer of Missions and Functions, Updated Information, Cochise County, AZ; Worcester and Middlesex Counties, MA and Monmouth County, NJ.

Summary

EPA had no objections to the proposed action.

Final EISs

ERP No. F-COE-L39046-AK, Southeast Alaska Harbors Improvement, Construction of Offshore Breakwaters in Sitka Channel for Protection and Expansion of Thomsen Harbor, Implementation, AK.

Summary

EPA still had concern regarding indirect and cumulative environmental impacts and the proposed monitoring program.

ERP No. F-NOA-K90025-CA, Monterey Bay National Marine Sanctuary, Establishment, Designation and Management Plan, San Mateo, Santa Cruz and Monterey Counties, CA.

Summary

The FEIS addressed the questions EPA raised in its DEIS comments and therefore, EPA has no objection to the proposed action. Additional EPA comments were provided to clarify areas that are subject to EPA jurisdiction under the Clean Water Act and the Marine Protection, Research and Sanctuaries Act.

ERP No. F-SFW-J64004-WY Rating, Cokeville Meadows National Wildlife Refuge, Management Plan, Implementation and Land Acquisition, Bear River Valley, Lincoln County, WY.

Summary

EPA had no objection to the proposed actions.

ERP No. FS-AFS-L01004-ID, Sunbeam Mining Project, Grouse Creek Gold and Silver Mines Plan of Development and Operation Modifications, Approval and COE Section 404 Permit, Custer County, ID.

Summary

EPA expressed environmental concerns regarding project-related wetland and riparian resource impacts, potential acid rock drainage, tailings pond cyanide levels, and air emission. EPA requested that mitigation measures be fully stipulated in federal authorizations.

Dated: August 10, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-19499 Filed 8-13-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4195-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5075 OR (202) 260-5076.

Availability of Environmental Impact Statements Filed August 3, 1992 Through August 7, 1992, Pursuant to 40 CFR 1506.9.

EIS No. 920316, DRAFT EIS, FHW, NC, Winston-Salem Northern Beltway (Western Section), Construction, US 158 Northward to US 52, Funding and COE Section 404 Permit, Forsyth County, NC, Due: September 30, 1992, Contact: Nicholas L. Graf (919) 856-4346.

EIS No. 920317, FINAL EIS, FHW, MO, US 71 Improvement, I-144 to Arkansas State Line, Funding and section 404 Permit, Jasper, Newton and McDonald Counties, MO, Due: September 14, 1992, Contact: James Mullen (314) 636-7104.

EIS No. 920318, DRAFT EIS, AFS, WA, Threemile Area Timber Sales and Other Projects, Harvesting Timber and Other Resource Management Activities, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille County, WA, Due: October 1, 1992, Contact: Andrew C. Mason (509) 446-7500.

EIS No. 920319, FINAL EIS, FHW, IN, US 24 Relocation, IN-13 to IN-9/37, Funding and 404 Permits, Wabash and Huntington Counties, IN, Due: September 14, 1992, Contact: Douglas N. Head (317) 269-7494.

EIS No. 920320, FINAL EIS, AFS, OH, Wayne National Forest, Amendment Land and Resource Management Plan, Determination of Lands Suitable for Oil and Gas Leasing and COE Section 404 Permit, Several Counties, OH, Due: September 14, 1992, Contact: Regis E. Terney (812) 275-5987.

EIS No. 920321, FINAL EIS, FHW, PA, I-81 Connector/LR-1067, Section A01 Construction, US 11/Harrisburg Exchange to I-81 on the North, Funding and 404 Permit, Cumberland County, PA, Due: September 18, 1992, Contact: Manuel A. Marks (717) 782-2222.

EIS No. 920322, FINAL EIS, AFS, UT, Uinta National Forest Plan Amendment, Rangeland Ecosystem Management Plan, Implementation, Sanpete, Wasatch, Utah, Toole and Juab Counties, UT, Due: September 14, 1992, Contact: Norman L. Huntsman (801) 377-5780.

EIS No. 920323, DRAFT EIS, USN, CA, AZ, US Naval Observatory Optical

Interferometer Project, Construction, Operation and Site Selection, Anderson Peak and Chews Ridge in Los Padres National Forest, Monterey County, CA or US Naval Observatory Station in Flagstaff County, AZ, Due: September 28, 1992, Contact: Patricia Duff (415) 244–3715.

Amended Notices

EIS No. 920305, DRAFT EIS, COE, CA, Arts Park LA Development and Construction, Approval, Lake Balboa Park, Sepulveda Flood Control Basin, San Fernando Valley, City of Los Angeles, Los Angeles County, CA, Due: September 14, 1992, Contact: Mr. Gene Seagle (213) 894–5030. Published FR 07–31–92—Correction to Telephone Number.

Dated: August 10, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–19498 Filed 8–13–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

Dated: August 7, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0391.

Title: Monitoring Program for Impact of Federal-State Joint Board Decisions.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Quarterly and annually.

Estimated Annual Burden: 708 responses; 1.94 hours average burden per response, 1,376 hours total annual burden.

Needs and Uses: In a Recommended Decision and Order, released March 31, 1987, the Federal-State Joint Board in Docket No. 80–286 (Joint Board) recommended increasing subscriber line charges, expanding the federal lifeline assistance program, retargeting the formula for high cost assistance, and modifying the common line pooling system. At the behest of the members of the Congressional Oversight Committees, it also recommended establishing a monitoring program to track the impact of these changes. The Commission adopted the Docket No. 80–286 Joint Board recommendations on April 16, 1987. In a Recommended Decision and Order, released May 28, 1987, the Joint Board made specific recommendations on the details of the monitoring program. In a Recommended Decision and Order, released July 8, 1992, the Joint Board recommended an extension of the monitoring program. In an Order released July 20, 1992, the Commission adopted this recommendation. The monitoring program is necessary for the Commission, the Joint Board, Congress, and the general public to assess the impact of the Joint Board decisions. Failure to implement the program would have made it impossible to determine the impact of these decisions and to assure that they do not produce unanticipated results contrary to the public interest. We note that the Monitoring Report has not revealed any harmful effects of Commission decisions to date. Nevertheless, the reports should be continued because they have proven to be a valuable source of information and some of the Commission decisions bear continued monitoring.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–19365 Filed 8–13–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–950–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–950–DR), dated July 24, 1992, and related determinations.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, dated July 24, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 24, 1992:

Pike County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–19450 Filed 8–13–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 19, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 19, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests on balance that economic activity is expanding at a moderate pace. Total nonfarm payroll employment increased somewhat in April, and the civilian unemployment rate edged down to 7.2 percent. Industrial production rose appreciably further in April partly reflecting some further recovery in motor vehicle assemblies. A rebound in retail sales in April about offset the decline in March. Single-family housing starts fell considerably for a second month in April. Recent data on orders and shipments of nondefense capital goods indicate appreciable increases in outlays for business equipment, and building contracts point to some slowing of the decline in nonresidential construction. The nominal U.S. merchandise trade deficit in January-February was somewhat below its average rate in the fourth quarter. Incoming data on prices and labor costs suggest little change from recent trends.

Most interest rates have fallen since the Committee meeting on March 31. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10

[1] Copies of the Record of policy actions of the Committee for the meeting of May 19, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

currencies declined on balance over the intermeeting period.

M2 and M3 contracted in March and April; and expansion in transactions balances, which had accounted for much of the growth in the broader aggregates over previous months, slowed markedly. Through April, expansion of M2 was slightly above and that of M3 was slightly below the lowers ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. With regard to M3, the Committee anticipated that the ongoing restructuring of depository institutions would continue to depress the growth of this aggregate relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from April through June at annual rates of about 2-1/2 and 1-1/2 percent, respectively.

By order of the Federal Open Market Committee, August 6, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92-19394 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

Allied Irish Banks, p.l.c., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks, p.l.c., Dublin, Ireland, and First Maryland Bancorp, Baltimore, Maryland; to engage *de novo* in making equity or debt investments in non-profit entities formed to promote economic development by assisting the development of small businesses in economically depressed areas pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Maryland, Delaware, Pennsylvania, Virginia, and the District of Columbia.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19395 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

Carolina First Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to acquire 9.8 percent of the voting shares of ComSouth Bankshares, Inc., Columbia, South Carolina, and thereby indirectly acquire Bank of Charleston, National Association, Charleston, South Carolina, and thereby indirectly acquire Commercial Bank of the South, N.A., Columbia, South Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Mansura Bancshares, Inc., Mansura, Louisiana; to merge with Cottonport Bancshares, Inc., Cottonport, Louisiana, and thereby indirectly acquire Cottonport Bank, Cottonport, Louisiana; and to merge with Cen-La Bancshares, Inc., Marksville, Louisiana, and thereby indirectly acquire Central Louisiana Bank & Trust, Marksville, Louisiana.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Albrecht Financial Services, Inc., Wall Lake, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Norwalk-Cumming State Bank, Norwalk, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. H & H Holding Company, Alton, Illinois; to become a bank holding company by acquiring at least 86.9 percent of the voting shares of Greene County National Bank in Carrollton, Carrollton, Illinois, and 100 percent of the voting shares of Godfrey State Bank, Godfrey, Illinois.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to merge with Am-Can Investment, Inc., Moorhead, Minnesota, and thereby indirectly acquire Moorhead State Bank, Moorhead, Minnesota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of Manufacturers Bancorp, Inc., Leavenworth, Kansas, and thereby indirectly acquire Manufacturers State Bank, Leavenworth, Kansas; First National Bank of Bonner Springs, Bonner Springs, Kansas; and Lenexa Bancorporation, Inc., Lenexa, Kansas, and thereby indirectly acquire Lenexa National Bank, Lenexa, Kansas.

2. FSB Bankshares, Inc., Fowler, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Fowler State Bank, Fowler, Kansas.

G. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. WSB Bancshares, Inc., Wellington, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Wellington Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire Wellington State Bank, Wellington, Texas. In connection with this application, Wellington Delaware Financial Corporation has applied to become a bank holding company by acquiring 100 percent of the voting shares of Wellington State Bank, Wellington, Texas.

2. U B & T Holding Co., Abilene, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, Abilene, Texas.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19396 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

Frances Gourley Lott Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Frances Gourley Lott Trust, Fort Worth, Texas, to acquire 7 percent; Mary Theresa Lott Trust, Fort Worth, Texas, to acquire 33 percent; Gayle Gourley Trust, Fort Worth, Texas, to acquire 34 percent; and W.J. Gourley III Trust, Fort Worth, Texas, to acquire 26 percent of the voting shares of Security Bank of Arlington, Arlington, Texas.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19397 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

NBD Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 8, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., and NBD Indiana, Inc., both located in Detroit, Michigan; as part of their application to acquire INB Financial Corporation, Indianapolis, Indiana, to acquire INB's 4.65 percent interest in BHC Securities, Inc., Philadelphia, Pennsylvania, for a total of 8.34 percent, and thereby provide securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. Old Kent Financial Corporation, Grand Rapids, Michigan; to acquire First Federal of Elgin, F.S.A., Elgin, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. Upon acquisition, it will be merged into Old Kent Bank, Elmhurst, Illinois.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19398 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 213]

Cooperative Agreement With American National Red Cross (ANRC) and the National Human Immunodeficiency Virus (HIV)/AIDS Information and Education Prevention Program; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for continuation of the cooperative agreement to the American National Red Cross (ANRC) for the development, implementation, and distribution of programs and materials relating to the prevention of transmission of the human immunodeficiency virus (HIV). The target audiences served by the ANRC are the general public, youth, minorities and workers in the workplace. Priority areas include capacity building, communications, educational programming and evaluation.The public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where To Obtain ADditional Information.)

Authority

This program is authorized under sections 301(a) and 317(a) of the Public Health Service Act, [42 U.S.C. 241(a) and 247b(a)] as amended. Applicable program regulations are found in 45 CFR part 74—Administration of Grants.

Eligible Applicants

Assistance will be provided only to the American National Red Cross for this project. No other applications will be solicited.

The FY 1992 United States House of Representatives, Committee on Appropriations Report, elucidated the continuing need for CDC to continue its support of the ANRC in providing local communities across the country with effective training programs and educational materials that are targeted to both the general public and specific audiences in HIV/AIDS prevention. The ANRC is the only organization with the unique capacity to provide HIV/AIDS information education on both national and local (state, county, city, etc.) levels simultaneously. The ANRC (1) has a strong and effective system for providing health and education training programs in local communities and neighborhoods; (2) has a network of local affiliate chapters in almost every county of the United States; (3) relies on volunteers and staff (a ratio of 7 volunteers to 1 staff) for service delivery; and (4) is able to obtain the latest scientific and epidemiologic information about HIV/AIDS because of its blood programs.

Availability of Funds

Approximately $7,000,000 is available in FY 1992 to fund this cooperative agreement. The above estimate is subject to change based on the scope and quality of the application.

It is expected that the award will be made for a 12-month budget period within a project period of up to five years.

Continuation awards within the project period will be made on the basis of satisfactory progress based on reporting requirements from the local community's HIV/AIDS efforts as defined in subsequent sections and availability of funds.

No funds will be provided for direct patient medical care (including substance abuse treatment and medical prophylaxis or drugs). Although contracts with other organizations are allowable under this cooperative agreement, the applicant must perform a substantial portion of the activities for which funds are requested.

Purpose

The purpose of this program is to provide primary prevention messages to the general public and targeted segments: youth, minorities, and workers. This allows ANRC chapters at the local level to be an HIV/AIDS education and support access point throughout the nation.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Provide specific, measurable, time-phased objectives for the execution of its HIV/AIDS Education Program within the framework of the national program goals. This can include relevant international activities.

2. Communicate with the general public to provide primary prevention messages at the local community level and document the number of persons receiving educational programs and the involvement of key local leadership and organizations.

3. Develop program materials to meet program needs at the local level.

4. Conduct process evaluations and baseline needs assessments to access the effectiveness of program materials in meeting changing needs at the local level.

5. Develop and implement an evaluation plan that measures the accomplishments of the program objectives at the national, regional, and local levels, including systems that identify methods of reporting: (1) Methods to measure outcome objectives; and (2) methods to measure program delivery at the local community level.

6. Provide partnership activities and linkages with other national organizations, with proof of support (i.e., verification of linkages with local affiliates, signed workplans, and/or other evidence of previous, current, or expected area-specific collaboration).

ANRC shall accomplish the following specific program areas during the first budget period:

a. Integrate outreach and marketing activities with other community outreach activities of the ANRC, including volunteer recruitment, training, and retention.

b. Convene meeting of CDC staff, ANRC Office of HIV/AIDS Education staff, ANRC Regional Managers and State Coordinators to detail steps for full implementation of HIV/AIDS educational programming.

c. Detail how local chapters will become information and referral centers for local communities, including linkages with media, wherever appropriate. Plan should include summaries of site visits to provide technical assistance to local chapters and documentation of (1) activities by local chapters currently involved in HIV/AIDS activities; (2) mechanisms to be used to address local concerns; and (3) accomplishments and problems encountered in meeting objectives. ANRC should specify the manner in which technical assistance will be given to chapters.

d. Identify specific activities to be undertaken that will support comprehensive school health education, and youth-serving organizations.

e. Evaluate the feasibility of providing minigrants to local ANRC Chapters for HIV education, based on targeted audiences served, such as Latino and other minority populations, out-of-school populations, parents of children and youth, and underserved youth populations (e.g., incarcerated migrant youth).

f. Identify specific activities to be undertaken by the ANRC which will support comprehensive workplace education, specifically education of employees and provisions through its 2700 chapters.

g. Identify specific activities to be undertaken by the ANRC which will support minority education.

h. Detail how local chapters will be able to adopt and support community-based organizations through jointly funded projects in a minimum of five different communities.

i. Develop a workplan to address elements such as donor education, volunteer education, and collaboration in media messages and public relations.

j. Hire a Program Manager that: (1) has supervisory responsibility and delegated authority for each major component of the ANRC HIV/AIDS Education Program and (2) reports directly to the Director of the Office of HIV/AIDS Education.

B. CDC Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating program activities.

2. Provide available survey data, current scientific information regarding risk factors for HIV infection, prevention measures, program strategies, and other resources for prevention of HIV infection.

3. Provide technical assistance in the evaluation of program effectiveness—process, impact, and outcome evaluation of activities and services.

4. Assist in the collaboration efforts with state/local health and education departments, national organizations, and corporate America.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

A. Communication to the General Public

The extent to which the applicant demonstrates its ability to communicate with the general public to provide primary prevention messages at the local community level. This would include reporting the number of persons who receive educational programs, involvement of key local leadership and organizations, and identification of the ANRC as an information and referral center at the local community level. Application should include how local chapters will be an ongoing information and referral center for the community, including linkages to available ANRC HIV/AIDS education resources for the general public, minorities, youth and workers in the workplace. CDC will provide available survey data and other resources, such as database services of the CDC National AIDS Clearinghouse. (25 points)

B. Developing and Updating Information

The extent to which the applicant program and materials will be updated and evaluated to continue to meet program needs at the local level. Such evaluation already includes process evaluation and baseline needs assessment; these should be briefly outlined. Applicant should list activities and process objectives to measure outcome objectives at the national and local community levels. (15 points)

C. Partnership Activities

The extent to which the applicant provides linkages by partnerships with other national organizations, with proof of support from other organizations. This would include letters of support from national organizations and verification of linkages with affiliates at the local community level. This can be shown through signed workplans, agreements or other evidence of collaboration describing [previous, current, as well as future] areas of collaboration. (10 points)

D. Measurable Objectives

The extent to which the proposed objectives are specific, measurable, time-phased, related to the proposed activities, and work to create an accepting and supporting environment for HIV-prevention messages at the local community level. (15 points)

E. Methods to Obtain Objectives

The quality of the applicant's plan for conducting program activities, the potential effectiveness of the proposed methods in meeting its objectives, and the extent to which requested funds are for delivery and marketing of HIV-prevention materials and programs at the national and local level. (15 points)

F. Evaluation

The extent to which the evaluation plan measures the accomplishment of program objectives at the national, regional and local level. Systems which identify methods of reporting should be included. (20 points)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) Activities.

Other Requirements

HIV/AIDS Requirements

Recipients must comply with the document entitled, "Content of AIDS-Related Written Materials, Pictorials, Adiovisuals, Qestionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. In complying with the Program Review Panel requirements, recipients are encouraged to use an existing program review panel such as one created by the state health department's HIV/AIDS Prevention Program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadline

The American National Red Cross must submit an original and two copies of the application PHS Form 5161–1 to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

Where to Obtain Additional Information

If you are interested in obtaining information regarding this program, please refer to Announcement 213 and contact Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE.,

room 300, Atlanta, GA 30305, (404) 842-6575 for business management technical assistance. Programmatic technical assistance may be obtained from Dr. Margaret Scarlett, AIDS Information and Education Specialist, National AIDS Information and Education Program, Office of the Deputy Director (HIV), 1600 Clifton Road, NE., Mailstop A-24, Atlanta, GA 30333, (404) 639-0979.

Please refer to Announcement Number 213 when requesting information and submitting an application.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone 202-783-3238).

Dated: August 7, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-19449 Filed 8-13-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Food and Drug Industry Exchange Meetings Concerning Avoidance of Illegal Animal Drug Residues Through Proper Drug Use; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) will hold a series of industry exchange meetings to discuss how to avoid illegal animal drug residues through proper drug use. The meetings will help the agency prepare regulatory and educational initiatives directed at the on-farm use of animal drugs.

DATES: The industry exchange meetings will be held on Tuesday, September 1, 1992; Wednesday, September 2, 1992; Thursday, September 3, 1992; Tuesday, September 22, 1992; Thursday, September 24, 1992; and Friday, September 25, 1992, from 10 a.m. to 2 p.m.

ADDRESSES: The industry exchange meetings will be held at the following locations:

September 1, 1992: Bethlehem Public Library, Community Rm., 451 Delaware Ave., Del Mar, NY 12054.

September 2, 1992: University of Wisconsin, Wisconsin Center, 702 Langdon St., Madison, WI 53706.

September 3, 1992: Des Moines Convention Center, 501 Grand Ave., Des Moines, IA 50309.

An additional notice will be published regarding the meeting sites for the following meetings: September 22, 1992: Tulare, CA; September 24, 1992: Amarillo, TX; and September 25, 1992: Tampa, FL.

People interested in attending these meetings should call the contact person listed below to preregister.

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Food and Drug Administration (HFV-244), Center for Veterinary Medicine, 7500 Standish Pl., Rockville, MD 20855, 301-295-8769.

SUPPLEMENTARY INFORMATION: FDA will hold a series of industry exchange meetings to discuss how to avoid illegal animal drug residues through proper drug use.

FDA is responsible for programs and regulatory activities associated with the prevention of illegal drug residues in food derived from treated animals. Illegal drug residues in edible products can constitute a health hazard to people consuming such food. The principal causes of illegal drug residues are the failure to observe proper withdrawal periods prior to slaughter or milk discard times, the failure to follow label dosage directions, the failure to use drugs properly, and negligence. Regardless of the reason, it is FDA's policy to hold responsible any individual in the production and marketing chain who can be shown to have caused (by an act of commission or omission) illegal residues in edible animal products. These individuals may be charged with violations of the Federal Food, Drug, and Cosmetic Act.

As a partial response to a task force report concerning avoidance of illegal residues, FDA will be developing specific guidance for its investigators concerning proper animal drug use by producers of livestock and poultry. This information will be used to determine when it is appropriate to take regulatory action against an individual associated with a violative residue in meat, milk, or eggs. Before preparing this guidance, the agency is holding a series of meetings to obtain from interested persons information concerning proper animal drug use by livestock producers. Subjects for which information is needed include drug use, drug storage, recordkeeping, and animal identification. The information obtained at these meetings will also support development of educational initiatives directed at the on-farm use of animal drugs.

Dated: August 10, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-19443 Filed 8-13-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Availability of Funds for Grants for (State) Demonstration Projects With Respect to Alzheimer's Disease or Related Disorders

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $3.9 million in fiscal year (FY) 1992 for 5 to 15 grants to States for demonstration projects with respect to Alzheimer's Disease or related disorders.

In order to allow States sufficient time to prepare applications, the application packages, guidance materials, and availability of funds announcements were sent directly to Offices of State Governors on June 19, 1992. This notice announces to the general public that FY 1992 grant funds are available for demonstration projects with respect to Alzheimer's Disease or Related Disorders.

The purpose of this program is to assist grantees in carrying out demonstration projects in planning, establishing, and operating respite care and supportive service programs as follows:

Program Development

To coordinate with public and private nonprofit organizations the development and operation of diagnostic, treatment, care management, respite care, legal counseling and education services provided within the State to individuals with Alzheimer's Disease or related disorders and to the families and care providers of these individuals; and

Services Delivery

Not less than 50 percent of the grant award) to provide home health care, personal care, day care, companion services, short-term (up to 14 days per annum) respite care in health and long-term are facilities, and other respite care to families and individuals with Alzheimer's Disease or related disorders; and

Information Dissemination

To provide to health care providers, to individuals with Alzheimer's Disease or related disorders, to the families of such individuals, to organizations established for such individuals and such families, and to the general public, information with respect to: (a) Diagnostic services, treatment services, and related services available to them; (b) sources of assistance in obtaining such services, including assistance under entitlement programs; and (c) the legal rights of such individuals and such families.

This program is authorized by Section 398 of the Public Health Service (PHS) Act, 42 U.S.C. 280c and grants will be awarded subject to Sections 399 and 399A of the PHS Act as amended by Public Law (Pub. L.) 101–557, Home Health Care and Alzheimer's Disease Amendments of 1990, 42 U.S.C. 280c–4 and 280c–5.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Alzheimer's Disease (or related disorders) Demonstration Grant (to States) Program directly addresses the Healthy People 2000 objectives by improving access to information and services for persons with Alzheimer's Disease and their families, including respite care services for underserved populations, particularly minority groups, and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20042–9325 (Telephone 202–783–3238).

ADDRESSES: Application kits and additional guidance (Form PHS 5161–1, with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189) may be obtained from, and completed applications should be mailed to: Joseph Hayden, Acting Grants Management Officer (GMO), Bureau of Primary Health Care, Health Resources and Services Administration, 12100 Parklawn Drive, Rockville, Maryland 20857. The telephone number is (301) 443–5902, and FAX number is (301) 443–5906. The Grants Management Officer is available to provide assistance on business management issues.

DATES: The deadline date for receipt of applications is August 22, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Sent* on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general program information or technical assistance, contact Carol E. Sherman, D.M.D., M.P.H., Division of Special Populations Program Development (DSPPD), Bureau of Primary Health Care (BPHC), room 9–12, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–9371.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Eligible applicants are States. The term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. Only one application per State will be accepted. The State must designate the agency responsible for implementing this demonstration program.

Available Funds

Approximately $3.9 million for discretionary grants to States to assist in carrying out demonstration projects for planning, establishing, and operating programs will be awarded in FY 1992.

Number of Awards

Between 5 to 15 awards will be made. Awards will be made for a one year budget period. Project periods may be for up to three years.

Grant Requirements

- A State must agree to expend at least 50 percent of the grant award for the provision of the following services: home health care, personal care, day care, companion services, short-term (up to 14 days per annum) respite care services in health care and long-term care facilities, and other respite care to individuals with Alzheimer's Disease or related disorders.
- A State must agree that no more than 10 percent will be expended for administrative expenses with respect to the approved grant.
- A State may not make payments from a grant for any item or service to the extent that payment has made, or can reasonably be expected to be made, under any State compensation program, under an insurance policy, under any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis. Grant funds may not be used to supplant State funds for services that are currently supported or for services from which State funds have recently been withdrawn.
- Matching Requirement: Under this program, the amount of Federal grant funds may not exceed 75 percent of the cost of services to be provided by the State for the first year, 65 percent for the second year, and 55 percent for the third year. Amounts provided by the federal government, or services assisted or subsidized to any significant extent by the Federal government, may not be counted toward the non-Federal contribution requirement. Non-Federal contributions may be in case or in kind, fairly evaluated, including plant, equipment, or services in accordance with applicable PHS guidelines.

Criteria for Evaluating Applications

In its review of applications for grants for the provision of services and activities under Sections 398 of the PHS Act, HRSA will consider the following evaluation criteria:

(a) Need: The extent to which the proposed plan has:

(1) identified and documented the need for respite care or supportive services for persons with Alzheimer's Disease or related disorders, for their families and their caregivers; (2) projected the number of persons to be served by the proposal; (3) identified traditionally underserved populations to be served, and; (4) described barriers to overcome in accessing respite care and supportive services.

(b) Proposed Plan: The extent to which the proposed plan has:

(1) Specified activities that will address identified needs for respite care and supportive services; (2) provided a specific description of proposed program services and activities which demonstrate that at least 50 percent of program funds will be used for direct services for program participants; (3) specified outreach activities to traditionally underserved populations; (4) provided a description of their quality assurance program; and (5) described the applicant's experience in providing outreach, respite care, and other supportive services, including a description of the proposed staffs' qualifications and experience.

(c) Project Administration, Collaboration and Coordination: The extent to which an applicant: (1) Has and will collaborate (and described strategies) with other public or private nonprofit agencies to link, coordinate and integrate the service system; (2) has an adequate plan and appropriately trained staff for the overall management of the project, including procedures for fiscal control and supervision of contracts.

(d) Budget: The extent to which the proposed budget is adequate and appropriate to support and meet the objectives of the program.

(e) Outcome and Evaluation: The adequacy of the plan to monitor the progress of the program and assess and document outcomes of the program.

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit made available for this program contains a listing of States which have chosen to set up a review system and identifies a State Single Point of Contact (SPOC) in each State for the review. Applicants are advised to contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on State process.

In the OMB Catalog of Federal Domestic Assistance, the Alzheimer's Demonstration Grant (to States) Program is listed as Number 93.951.

Dated: August 10, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-19390 Filed 8-13-92; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1992.

Name: National Advisory Council of the National Health Service Corps.

Date and Time: September 12-15, 1992, 2:00 p.m.

Place: Rancho Viejo Property, Rancho Viejo Drive, Expressway 77/83, Brownsville, Texas 78520.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin at 2 p.m. on Saturday, September 12, and adjourn at 6 p.m. On Sunday, September 13, the meeting will be from 8:30 a.m. to 6 p.m. On Monday, September 14, the Council will leave the hotel at 8 a.m. to begin site visits. The Council will visit the Brownsville Community Health Center in Brownsville, Texas; Hidalgo Health Care Corporation, Pharr, Texas; Su Clinica in Harlingen, Texas and Cameron County Health Department in San Benito, Texas.

The meeting is open to the public, however, no transportation will be provided to the sites.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1470.

Agenda Items are subject to change as priorities dictate.

Dated: August 10, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92-19391 Filed 8-13-92; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is given that Chapter S1, the Office of the Deputy Commissioner for Finance, Assessment and Management is being amended to reflect the establishment of the Division of Disability Hearings Quality (S1KC3), Office of Disability Program Quality (S1KC) in the Office of Program and Integrity Reviews (S1K).

The new material is as follows:

Section S1K.10. The Office of Program and Integrity Reviews—(Organization):

F. The Office of Disability Program Quality (S1KC).

Add:

3. The Division of Disability Hearings Quality (S1KC3).

Section S1K.20 The Office of Program and Integrity Reviews—(Functions):

F. The Office of Disability Program Quality (S1KC).

Add:

3. The Division of Disability Hearings Quality (S1KC3).

a. Plans, designs and maintains a quality assurance (QA) review system to assess quality in adjudication of disability claims in which a hearing before an administrative law judge (ALJ) has been requested.

b. Conducts QA reviews of the disability and procedural aspects of a sample of claims decided by the ALJ including State Agency reconsideration determinations that have been appealed by an ALJ hearing.

C. Plans and issues periodic reports related to the QA reviews of ALJ decisions.

d. Designs and conducts special studies of significant issues that are identified during the QA review.

Dated: August 6, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-19354 Filed 8-13-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-91]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal

landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agency at the following address: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; (These are not toll-free numbers).

Dated August 7, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/14/92

Suitable/Available Properties

Buildings (by State)

California

Bldgs. 604, 605, 612, 611, 613–618
Point Arena Air Force Station
Mendocino County, CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010237–189010246
Status: Unutilized
Comment: 1232 sq. ft. each; stucco-wood frame; most recent use—housing.

Bldg. 21180
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Location: Hwy 1, Hwy 246, Coast Rd., PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130384
Status: Unutilized
Comment: 7487 sq. ft., 1 story/wood shingle structure, most recent use—contracting administrative office, needs major rehab.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft., 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
In the municipality Dededo
Dededo Co: Guam GU 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Harmon VORsite (Portion) (AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue
Elmore County, ID 83648–
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Louisiana

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Michigan

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010776

Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story concrete block; potential utilities; possible asbestos; most recent use—Fire Department, vehicle parking building.

Bldgs. 51–62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010791–189010802
Status: Excess
Comment: 1134 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldgs. 63–67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010803–189010807
Status: Excess
Comment: 1306 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.

Bldgs. 72–89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010811–189010828
Status: Excess
Comment: 1168 sq. ft. each; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldgs. 9–13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010835–189010839
Status: Excess
Comment: 1056 sq. ft. each; 1 story wood frame residences.

Bldgs. 5–8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010840–189010843
Status: Excess
Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess

Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.
Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.
Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.
Bldgs. 216–224, 212, 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010847–189010855, 189010859, 1890109861
Status: Excess
Comment: 780 sq. ft. each; 1 story wood frame housing garages.
Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.
Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.
Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility..
Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldgs. 31–35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010867–189010871
Status: Excess
Comment: 36 sq. ft.each; 1 story; metal frame; prior use—storage of fire hoses.
Bldgs. 36–37, 39, 201–207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010872–189010874, 189010879–189010885
Status: Excess
Comment: 25 sq. ft. each; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

Oregon

Duplexes 126
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034
Landholding Agency: GSA
Property Number: 549220014
Status: Surplus
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 2 & 3 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational facility, possible asbestos, also 38 acres of land w/water well.
GSA Number: 9–D–OR–434I.
38 Single Family Residences
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034
Landholding Agency: GSA
Property Number: 549220015
Status: Surplus
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 3 & 4 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational facility, possible asbestos, also 38 acres of land w/water well.
GSA Number: 9–D–OR–434I.
10 Miscellaneous Buildings
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034
Landholding Agency: GSA
Property Number: 549220016
Status: Surplus
Comment: 1 story, most recent use—fire station, storage sheds, quonset hut, well housings.
GSA Number: 9–D–OR–434I.

Land (by State)

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano, CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing system equipment.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam, GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.
Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam, GU
96912–
Location: In the Municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.
Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino, CA 92402
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9,290 sq. ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Michigan

Bldg. 20
Calumet Air Force Station

Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13,404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1,000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125–4118
Landholding Agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

New Mexico

Bldg. 13 1606 ABW/DE
Kirtland AFB
Wyoming Avenue
Kirtland Co: Bernalillo NM 87117–5496
Landholding Agency: Air Force
Property Number: 189010072
Status: Unutilized
Comment: 520 sq. ft., 1 story portable building, off-site use only.

South Dakota

54 Bldgs.—Renel Heights
Ellsworth AFB Co: Pennington SD 57706–
Location: Across from main gate turn off.
Landholding Agency: Air Force
Property Numbers: 189010343–189010355, 189010386–189010426
Status: Unutilized
Comment: 852 sq. ft. to 1,652 sq. ft. each; 1 story concrete masonry block residences; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

124 Bldgs.—Skyway
Ellsworth AFB Co: Pennington SD 57706–
Location: Between main gate turn off and school gate.
Landholding Agency: Air Force
Property Numbers: 189010356–189010384, 189010760–189010774, 189030008–189030015, 189040003–189040026, 189110033–189110080
Status: Unutilized
Comment: 481 sq. ft. to 1,256 sq. ft. each; 1 and 2 story wood frame residences; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 1108, 1109, 1113, 1114
Ellsworth Air Force Base
Center Drive
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189010439–189010442
Status: Unutilized
Comment: 10,303 sq. ft.; 2 story wood frame with basement; possible asbestos; secure facility with alternate access; potential utilities.

Texas

Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft., possible asbestos, most recent use—supply store, needs rehab.

Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5,815 sq. ft., 1 story corrugated iron, possible asbestos, needs rehab, most recent use—recreation, workshop.

Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage possible asbestos; needs rehab.

Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1,344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.

Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2,659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.

Land (by State)

Alaska

Former Ft. Wainwright Annex
Corner of 12th Ave. and Alasdom Road
Fairbanks, AK 99707
Landholding Agency: GSA
Property Number: 549220013
Status: Surplus
Comment: 1.89 acres, easement restrictions
GSA Number: 9–D–AK–0537R.

California

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino, CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento, CA 95652–5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Florida

Eglin AFB
Mossy Head Co: Walton, FL 32533–
Location: NW quadrant of Florida Highway 285 and I–10. Bounded on the North by Louisville RR near Mossy Head, Florida.
Landholding Agency: Air Force
Property Number: 189010134
Status: Excess
Comment: 50 acres; Parcel 9; previous buffer zone; potential utiltiies.

Eglin AFB
Mossy Head Co: Walton, FL 32533–
Location: NE quadrant of Florida Highway 285, I–10 intersection. Bounded on the North by Louisville and Nashville RR near Mossy Head, Florida.
Landholding Agency: Air Force
Property Number: 189010135
Status: Excess
Comment: 265 acres; Parcel 10; previous buffer zone; potential utilities.

Eglin AFB
Mossy Head Co: Walton, FL 32533–
Location: Approximately 1 mile east of Florida Highway 285 and US Highway 90 on north side.
Landholding Agency: Air Force
Property Number: 189010136
Status: Excess
Comment: 47 acres; Parcel 11; previous buffer zone; potential utilities.

Suitable/To Be Excessed

Nevada

Bldgs. 300–302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark, NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120001–189120003
Status: Unutilized
Comment: 1,573 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 303–306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark, NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120004–189120007
Status: Unutilized
Comment: 2,750 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 307–310, 318, 320–322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark, NV 89018
Landholding Agency: Air Force
Property Numbers: 189120008–189120011, 189120019, 189120021–189120023
Status: Unutilized
Comment: 2,170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 311–317, 319, 324–326
Nellis Air Force Base
Indian Springs AF Aux. Field

Indian Springs Co: Clark, NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120012–189120018, 189120020, 189120025–189120027
Status: Unutilized
Comment: 2,424 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120024
Status: Unutilized
Comment: 1233 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 331–341, 343, 354–346, 348–353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120028–189120047
Status: Unutilized
Comment: 1170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2464 sq. ft., one story recent use-maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2570 sq. ft., one story, most recent use-Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 sq. ft., one story, most recent use-religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 sq. ft., one story, most recent use-child care facility, easement restrictions, potential utilities, off-site removal only.

Bldgs. 3027, 3029–3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120052, 189120054–189120065
Status: Unutilized
Comment: 120 sq. ft. each, one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

North Dakota

Bldg. 101
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110095
Status: Excess
Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 102–106
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110096–189110100
Status: Excess
Comment: 988 sq. ft. each; 3 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 107, 110–111
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110101–189110103
Status: Excess
Comment: 768 sq. ft. each; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 112–116, 123–129
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110104–189110108, 189110115–189110121
Status: Excess
Comment: 1510 sq. ft. each; 3 bedroom single family housing unit; with attached garage; needs rehab; off-site use only.

Bldgs. 117, 119–122
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110109, 189110111–189110114
Status: Excess
Comment: 1595 sq. ft. each; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.

Bldg. 118
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110110
Status: Excess
Comment: 2295 sq. ft.; 4 bedroom single family housing unit, needs rehab; off-site use only.

Bldg. 141
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110122
Status: Excess
Comment: 364 sq. ft.; 1 stall vehicle garage; needs rehab; off-site use only.

Bldgs. 142–145
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110123–189110126
Status: Excess
Comment: 624 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Bldgs. 201–218
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110127–189110144
Status: Excess
Comment: 1203 sq. ft. each; 3 bedroom single family relocatable housing units; needs rehab; off-site use only.

Bldgs. 221–229
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110145–189110153
Status: Excess
Comment: 672 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Unsuitable Properties

Buildings (by State)

Alaska

Bldgs. 203, 113
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010296–189010297
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldgs. 165, 150, 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010298–189010300
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 1401
Galena Airport
21 CSG/DEER

Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010302
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 11–230, 21–116, 34–616, 43–010, 63–320, 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010303–189010308
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 103, 110, 112–115, 118, 1001, 1018, 1025, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010309–189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010320–189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 103–105, 110, 114, 202, 204–205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010330–189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road.
Comment: Isolated and remote; Arctic environment.

Alabama

48 Bldgs.
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189010002–189010005, 189110165–189110167, 189120231–189120232, 189130335–189130336, 189130370–189130381, 189140010–189140014, 189220005–189220014
Status: Unutilized
Reason: Secured Area.

22 Bldgs.
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Numbers: 189010011–189010013, 189010015–189010016, 189010019–189010020, 189010022, 189040853–189040855, 189130349, 189140001–189140009, 189140021
Status: Underutilized
Reason: Secured Area.

Bldg. 1435–1436, 1440–1441
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189030220–189030223
Status: Unutilized
Reason: Floodway, Secured Area.

Bldg. 1004
Reserves Forces Training Facility
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Location: 1004 Maxwell Blvd. & Kelly Street
Landholding Agency: Air Force
Property Number: 189130369
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone.

Arizona

Dormitory Building 632
Williams Air Force Base
Corner of 4th and D Street
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force
Property Number: 189040856
Status: Unutilized
Reason: Secured Area.

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518–
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone.

Bldg. 392 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano, CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010187
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano, CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

Bldgs. 152, 159, 384 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano, CA 94535–5496
Landholding Agency: Air Force
Property Numbers: 189010190–189010192
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldgs. 707, 502, 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino, CA 92409–5045
Landholding Agency: Air Force
Property Numbers: 189010193, 189010196–189010197
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino, CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material.

Bldgs. 100–101, 116, 202
Point Arena Air Force Station
Co: Mendocino, CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010233–189010236
Status: Unutilized
Reason: Secured Area.

Bldgs. 201–204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Numbers: 189010546–189010549
Status: Unutilized
Reason: Secured Area.

Bldgs. 1009–1010, 1015, 1022–1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB Co: Santa Barbara, CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010558–189010563
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldgs. 1100–1101, 1103–1107, 1110, 1108
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara, CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010567–189010569, 189010571–189010574, 189010579–189010580
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldg. 23102
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Highway 1 and Highway 246; Coast Road, Pt. Sal Rd; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189110082
Status: Unutilized
Reason: Secured Area.

Bldgs. 1011–1014, 1016–1021, 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, Pt Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Numbers: 189130350–189130360
Status: Unutilized

Reason: Secured Area, Within 2,000 ft. of flammable or explosive material.

Bldg. 5015
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, Pt Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130361
Status: Excess
Reason: Secured Area, Within 2,000 ft. of flammable or explosive material, Within airport runway clear zone.

Bldgs. 8006, 8011, 11443, 1011–1014, 1016–1021, 1027, 1031, 6105, 8111, 8118–8119, 8140–8141, 9341, 10312, 10314, 10503, 5431, 8117, 13009, 13012, 13013, 13015, 13021, 13221
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, Pt Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Numbers: 189130362, 189140028–189140029, 189210007–189210028, 189230005–189230006, 189230014–189230019
Status: Unutilized
Reason: Secured Area.

Bldg. 10748
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210029
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 11195, 10004, 10702, 10704, 10706, 10710, 10726, 10742, 16104
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189220017, 189230007–189230013, 189230020
Status: Unutilized
Reason: Secured Area.

Colorado

Bldg. 24
Buckley Air Nat'l Guard Base
Aurora Co: Arapahoe CO 80011–9599
Location: Demolished 7 Dec. 90.
Landholding Agency: Air Force
Property Number: 189010249
Status: Unutilized
Reason: Secured Area.

Bldg. 291
Lowry Air Force Base
Denver Co: Denver CO 80230–5000
Location: South of 6th Avenue and east of Rosemary Court.
Landholding Agency: Air Force
Property Number: 189010250
Status: Excess
Reason: Secured Area.

Delaware

Bldg. 230
Dover Air Force Base
436 ABG/DE
Dover AFB Co: Kent DE 19902–
Landholding Agency: Air Force
Property Number: 189140017
Status: Unutilized
Reason: Secured Area.

Bldg. 1900, 1304
436 CSG Dover AFB
Dover Co: Kent DE 19902–5516
Landholding Agency: Air Force
Property Numbers: 189120230, 189140018
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

Florida

Bldg. 42, 6058–6059
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Numbers: 189110001–189110003
Status: Unutilized
Reason: Secured Area.

Bldg. 8501, 8505, 8507
Eglin Air Force Base
Site A–5
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Numbers: 189110005–189110006, 189110008
Status: Unutilized
Reason: Floodway, Secured Area.

Bldg. 1635
Patrick Air Force Base
River Picnic Area/Skeet Range
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189110161
Status: Unutilized
Reason: Secured Area.

Bldg. 400
Patrick Air Force Base
C Street bet. First & Second Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220001
Status: Unutilized
Reason: Secured Area.

Bldg. 430
Patrick Air Force Base
Third Street bet. B and C Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220002
Status: Underutilized
Reason: Secured Area.

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403–5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area.

Facility 01322
Cape Canaveral AFS
1301 Flight Control Road
Cape Canaveral Co: Brevard FL 32920
Landholding Agency: Air Force
Property Number: 189220004
Status: Unutilized
Reason: Secured Area.

Idaho

Bldgs. 1012, 923, 604
Mountain Home Air Force Base
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Numbers: 189030004–189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone.

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

Bldgs. 3670, 503, 869, 865
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Numbers: 189010248, 189010725, 189110087, 189130347
Status: Unutilized
Reason: Secured Area.

Indiana

Bldg. 520, 309, 301
Grisson Air Force Base
Grisson Co: Miami IN 46971–
Landholding Agency: Air Force
Property Numbers: 189010183–189010184, 189010186
Status: Underutilized
Reason: Secured Area.

Bldg. 219, 307
Grissom Air Force Base
Grissom AFB Co: Miami IN 46971–5000
Landholding Agency: Air Force
Property Numbers: 189110084–189110085
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 707
Parallel to NE–SW runway & alternate runway
Grissom AFB Co: Miami IN 46971–
Landholding Agency: Air Force
Property Number: 189130334
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

Lousiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area.

Massachusetts

Bldg. 1900, 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Numbers: 189010438, 189040002
Status: Unutilized

Reason: Secured Area

Maryland

Bldg. 4–5
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince George's MD 20613–
Landholding Agency: Air Force
Property Numbers: 189010261, 189010264
Status: Unutilized
Reason: Secured Area.

Bldg. 3427
Andrews Air Force Base
3427 Pennsylvania Avenue
Andrews AFB Co: Prince Georges MD 20335–
Landholding Agency: Air Force
Property Number: 189140016
Status: Unutilized
Reason: Secured Area.

Maine

Bldg. 5200, 6200, 6100
Loring Air Force Base
Limestone Co: Aroostook ME 04750–
Landholding Agency: Air Force
Property Numbers: 189010541–189010543
Status: Unutilized
Reason: Secured Area.

Michigan

Bldg. 560, 5658, 580, 856, 1005, 1012, 1041, 1412, 1434, 1688, 1689, 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48054-
Landholding Agency: Air Force
Property Numbers: 189010522–189010533
Status: Unutilized
Reason: Secured Area.

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 1890100810
Status: Excess
Reason: Other
Comment: sewage treatment and disposal facility.

Bldg. 99–100
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010831–189010832
Status: Excess
Reason: Other
Comment: water well.

Bldg. 118, 120, 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010875–189010876, 189010878
Status: Excess
Reason: Other
Comment: Gasoline Station.

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010877
Status: Excess
Reason: Other
Comment: Pump lift station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010889
Status: Excess
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010890
Status: Excess
Reason: Other
Comment: Water pump facility.

Missouri

Bldg. 42, 45–47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125-
Landholding Agency: Air Force
Property Numbers: 189010726, 189010728-189010731
Status: Unutilized
Reason: Secured Area.

Montana

Bldg. 140
Malmstrom AFB
Between Goddard Avenue & 2nd Street
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010076
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental.

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010077
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental.

Bldg. 621
Malmstrom AFB
1st Street & Avenue I
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010078
Status: Unutilized
Reason: Other environmental, Secured Area.
Comment: Friable asbestos.

Bldg. 1500, 1502
Malmstrom AFB
Perimeter Road
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010079-189010080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Other environmental.

Bldg. 627, 677
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010722–189010723
Status: Unutilized
Reason: Secured Area, Other environmental.

Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189040057
Status: Underutilized
Reason: Secured Area, Other environmental.

Nebraska

Offutt Communications Annex–#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Other
Comment: former sewage lagoon.

Bldgs. 637, 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524
Landholding Agency: Air Force
Property Numbers: 189230021–18923022
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

North Carolina

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189010262
Status: Unutilized
Reason: Secured Area.

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area.

Bldg. 459
Pope Air Force Base
Armistead Street
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189140019
Status: Unutilized
Reason: Secured Area.

Bldg. N. 024
Pope Air Force Base
Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189220003
Status: Underutilized
Reason: Secured Area.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area.

New Hampshire

Bldg. 132, 317, 343, 439
Pease Air Force Base
Pease AFB Co: Rockingham NH 03803–
Landholding Agency: Air Force
Property Numbers: 189010536–189010539
Status: Excess

Reason: Within 2000 ft. of flammable or explosive material.

New Mexico

Bldg. 20330
Kirtland Air Force Base
1606 ABW/DEEVR
Kirtland AFB Co: Bernalillo NM 87117-5496
Landholding Agency: Air Force
Property Number: 189110083
Status: Unutilized
Reason: Secured Area.

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330-
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area.

Bldgs. 48013, 0002
Kirtland Air Force Base
Kirtland AFB Co: Bernalillo NM 87117-5496
Landholding Agency: Air Force
Property Number: 189140020, 189230004
Status: Unutilized
Reason: Secured Area.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303-5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 272, 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441-
Landholding Agency: Air Force
Property Numbers: 189140022-189140023
Status: Excess
Reason: Secured Area.

Facilities 814, 808, 807
Griffiss Air Force Base
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Numbers: 189230001-189230003
Status: Excess
Reason: Within airport runway clear zone, Secured Area.

Ohio

Facility 30205
Wright-Patterson Air Force Base
Greene Co: Greene OH 45433-
Landholding Agency: Air Force
Property Number: 189010434
Status: Unutilized
Reason: Secured Area.

910 TAG
Base Sewage Treatment Plant
Vienna Co: Trumbull OH 44473-5000
Location: West of the 910 TAG Base on Ridge Road. Youngstown Municipal Airport
Landholding Agency: Air Force
Property Number: 189110081
Status: Excess
Reason: Other
Comment: Sewage treatment plant.

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473-5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area.

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473-5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area.

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705-5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759-
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area.

South Dakota

176 Bldgs., Renel Heights
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706-
Location: Across from main gate turn off.
Landholding Agency: Air Force
Property Numbers: 189010443-189010521, 189010732-189010759, 189030016-189030032, 189040027-189040055, 189040058, 189110011-189110032
Status: Unutilized
Reason: Other
Comment: Earth movement/shifting, cracked exterior and interior walls with separations several inches wide; earth shift severed sewer lines.

101 Bldgs., Skyway
Ellsworth Air Force Base
Ellsworth Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Number: 189120066-189120166
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

220 Bldgs., Renel Heights
Ellsworth Air Force Base
Ellsworth Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Numbers: 189120167-189120229, 189130001, 189130003-189130157, 189130382
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

175 Bldgs., Skyway
Ellsworth AFB Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Numbers: 189130158-189130331, 189130383
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8904
Maintenance Work Center Unit
204 Harrison Terrace
Ellsworth AFB Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Number: 189130332
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 88513, 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706
Landholding Agency: Air Force
Property Numbers: 189210001-189210002
Status: Unutilized
Reason: Extensive deterioration.

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843-5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone.

Bldg. 645
Reese Air Force Base
Lubbock Co: Lubbock TX 79489-
Location: West of Lubbock
Landholding Agency: Air Force
Property Number: 189010210
Status: Excess
Reason: Secured Area.

Bldg. 02106
Reese Air Force Base
Lubbock Co: Lubbock TX
Landholding Agency: Air Force
Property Number: 189210005
Status: Unutilized
Reason: Secured Area.

Utah

11 Bldgs.
Hill Air Force Base
Co: Davis UT 84056-
Landholding Agency: Air Force
Property Numbers: 189010275, 189010277, 189010279, 189010281, 189010283, 189010285, 189010287, 189010289, 189010291, 189010293, 189010295
Status: Unutilized
Reason: Secured Area.

Bldg. 788-790
Hill Air Force Base
Co: Davis UT 84056-
Landholding Agency: Air Force
Property Numbers: 189040858-189040860
Status: Unutilized
Reason: Within airport runway clear zone, Secure Area.

Washington

21 Bldgs.
Fairchild AFB
Fairchild Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Numbers: 189010139-189010159
Status: Unutilized
Reason: Secured Area.

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Numbers: 189210004
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Wyoming

Bldg. 31, 34, 37, 284, 385, 803
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Numbers: 189010198–189010203
Status: Unutilized
Reason: Secured Area.

Land (by State)

Alaska

Champion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other, Isolated area, not accessible by road
Comment: Isolated and remote area; Arctic environment.

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other, Isolated area, not accessible by road
Comment: Isolated and remote area; Arctic environment.

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other, Isolated area, not accessible by road
Comment: Isolated and remote area; Arctic environment.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway.

Maryland

Land
Brandywine Storage Annex
1776 ABE/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area.

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch.

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon, SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area.

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway.

Parcel 3, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area.

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451–
Landholding Agency: Air Force
Property Number: 189010589
Status: Untilized
Reason: Secured Area.

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area.

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area.

[FR Doc. 92–19269 Filed 8–13–92; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-919-02-4830-02-ADVB]

Northern Alaska Advisory Council Public Meetings

The Northern Alaska Advisory Council will hold a public meeting Monday, August 24, 1992, in Barrow, Alaska, in addition to the Tuesday, August 25, 1992, public meeting in Coldfoot, Alaska (as published in the July 21, 1992, **Federal Register**). The Barrow public meeting will be from 2 to 4 p.m. in the North Slope Borough Assembly Room, with public comments taken from 2:30 to 3:30 p.m. The Coldfoot public meeting will be from 8 to 9:30 p.m., with public comments taken from 8:30 p.m. to 9 p.m. Written comments may be submitted at both meetings.

The meetings will be held during a field trip that will familiarize the council members with Bureau of Land Management facilities along the Dalton Highway. During the August 24 to 26 trip, and during the public meetings, the council will discuss the present status of public facilities along the Dalton, and the need to develop facilities to accommodate visitor safety, dispense information and protect and conserve the public land and its natural resources.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: August 6, 1992.

Roger Bolstad,

Designated District Manager.

[FR Doc. 92–19438 Filed 8–13–92; 8:45 am]
BILLING CODE 4310-JA-M

[AK-060-02-4230-13; F-081162]

Realty Action: Noncompetitive Sale of Public Lands at Wiseman, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

The following described land has been found to be suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713.), at not less than the fair market value (FMV). The lands will not be offered for sale until at least 60 days after the date of this notice and will be offered to the individual indicated below.

Applicant	USS 5276 Lot No. and acreage	Appraised fair market value
Mr. William Ray Lytle, 50 Fairview Circle, Chico, California 95927.	Lot 23 3.56 Acres.	$7,825.00

The land described is hereby segregated from appropriation under the public land laws, including the mining laws pending disposition of this action or 270 days from the publication of this notice, whichever comes first.

The land is being offered for direct sale to the applicant to protect equities arising from inadvertent unauthorized use.

The sale is consistent with the Utility Corridor Resource Management Plan (RMP). The land conveyance will accommodate the subject inadvertent trespass upon public land.

It has been determined that the subject parcel does contain known mineral values; therefore, mineral interests shall not be conveyed in the patent.

The patent, when issued, will contain reservations for all minerals to the United States and will be subject to a right-of-way for ditches and canals. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Arctic District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Arctic District Office, at the above address. Objections will be reviewed by the Alaska State Director, who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: August 7, 1992.

David E. Liebersbach,

Acting Arctic District Manager.

[FR Doc. 92-19439 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-920-02-4212-12; AZA-23606]

Realty Actions; Sales, Leases, Etc.: Arizona Correction

August 5, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of Land Exchange Documents; correction.

SUMMARY: This Notice corrects the description of land previously published in the **Federal Register** on December 30, 1991, (56 FR 67326) in a Notice of issuance of exchange documents between the United States and the State of Arizona.

1. On page 67326, first column, line 49, the last call should read "N½SW¼ NW¼."

2. On page 67326, second column, line 19 should read "Sec. 32, all."

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 92-19356 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-4214-10; GP2-384; OR-48432 (WASH)]

Public Meeting; Proposed Withdrawal and Initiation of Resource Management Plan Amendment; Washington

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice.

SUMMARY: A District Resource Management Plan (RMP) Amendment-Environmental Assessment will be prepared to address the U.S. Department of the Army, Corps of Engineers application to withdraw public lands to expand the Yakima Firing Center. This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding both the proposed RMP amendment and the proposed withdrawal.

DATES: The public meeting will be held September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Jim Fisher, BLM, Wenatchee Resource Area Office, 1133 N. Western Ave., Wenatchee, Washington 98801, telephone 509-662-4223.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a meeting will be held to provide an opportunity for public involvement regarding the application by the U.S. Department of the Army, Corps of Engineers to withdraw 9,745.82 acres of public lands within the Yakima Firing Center expansion area. Public involvement is also needed for the concurrent proposal to amend the BLM Spokane District Resource Management Plan to allow the subject withdrawal. The public lands are mostly checkerboard tracts, and are located in the portion of BLM's Saddle Mountain Management Area west of the Columbia River, extending south from I-90 to the present boundary of the Yakima Firing Center. These lands are currently managed for wildlife habitat, range, and recreation. The proposed withdrawal would close the lands to settlement, sale location, and entry under the general land laws, including the U.S. mining laws (30 U.S.C. ch. 2), and from applications and offers under the mineral leasing laws, subject to valid existing rights. This proposal will be evaluated by an interdisciplinary team of natural resource specialists, including a wildlife biologist, range conservationist, botanist, archaeologist, recreation specialist and realty specialist.

The meeting will begin at 7 p.m., Wednesday, September 16, 1992, at the Hal Holmes Center, 201 N. Ruby Street, Ellensburg, Washington. The agenda will include (1) information briefings by both the BLM and the U.S. Army Corps of Engineers, (2) oral statements by interested parties; and (3) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Spokane District Office. Oral statements would be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management and the Corps of Engineers before any recommendation concerning the proposed withdrawal is submitted to the Secretary of the Interior for final action under the authority of section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. Documents relative to the plan amendment may be obtained from the BLM Spokane District Office (E. 4217 Main, Spokane, WA 99202), the BLM Wenatchee Resource Area Office (address given above), and the U.S. Army Corps of Engineers, Seattle District (P.O. Box 3755, Seattle, WA 98124-2255).

Dated: August 7, 1992.

Betty M. McCarthy,

Acting Chief, Branch of Lands and Minerals Operations, BLM Oregon/Washington State Office.

[FR Doc. 92-19357 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-367; OR-47267]

Partial Termination of Proposed Withdrawal and Reservation of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has canceled its application in part to withdraw certain land to protect the Thunder Egg Lake Agate Beds in the Fremont National Forest. This action will terminate a portion of the proposed withdrawn and will relieve the land of the temporary segregative effect.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

SUPPLEMENTARY INFORMATION: The notice of the U.S. Department of Agriculture, Forest Service, application OR–47267 for withdrawal was published as FR Doc. 91–19317 of the issue of August 14, 1991. The purpose of the proposed withdrawal is to protect the Thunder Egg Lake Agate Beds. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has canceled the application insofar as it effects the following described land:

Willamette Meridian

Fremont National Forest

T. 40 S., R. 21 E.,
Sec. 8, N½, N½SW¼, SW¼SW¼, N½SE¼SW¼, SE¼;
Sec. 17, E½NE¼, W½NW¼, W½SE¼NW¼, SE¼SE¼NW¼.

The area described contains 810.00 acres in Lake County, Oregon.

Pursuant to the regulation 43 CFR 2310.2–1(c), at 8:30 a.m., on September 14, 1992, the proposed withdrawal will be terminated in part and the land described above will be relieved of the segregative effect of the above-referenced application. The land has been and will remain open to mineral leasing.

The land remaining in withdrawal application OR–47267 is described and amended to read as follows:

Willamette Meridian

Fremont National Forest

T. 40 S., R. 21 E.,
Sec. 8, S½SE¼SW¼;
Sec. 17, W½NE¼, NE¼NW¼, NE¼SE¼NW¼.

The area described contains 150.00 acres in Lake County, Oregon.

Dated: August 4, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–19355 Filed 8–13–92; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Reclamation

Strategic Plan; Availability

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Strategic Plan.

SUMMARY: This notice announces the availability of the Strategic Plan, which describes a broad, long-term framework for Reclamation's program.

DATES: The document will be available on or about August 24, 1992, under the title "Strategic Plan."

ADDRESSES: Single copies of the document will be made available at no charge to the public upon written request to:

Bureau of Reclamation, Publications and Records Management Branch (Attention D–7923), P.O. Box 25007, Denver, CO 80225–0007, or by calling (303) 236–6741.

FOR FURTHER INFORMATION CONTACT: Contact any of the following:

Dorothy W. Kuhn, Public Affairs Officer, Bureau of Reclamation, Washington Office, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–4662.

M. Louisa Beld, Media Production Chief, Bureau of Reclamation, Denver Office, P.O. Box 25007, Denver, Colorado 80225–0007, telephone (303) 236–7000.

Deborah L. Schwarz, Public Affairs Officer, Bureau of Reclamation, Pacific Northwest Regional Office, P.O. Box 043, Boise, ID 83724, telephone (208) 334–1937.

Jeff J. McCracken, Public Affairs Officer, Bureau of Reclamation, Mid-Pacific Regional Office, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–4919.

Julian Rhinehart, Public Affairs Officer, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, NV 89005, telephone (702) 293–8420.

Berry D. Wirth, Public Affairs Officer, Bureau of Reclamation, Upper Colorado Regional Officer, P.O. Box 11568, Salt Lake City, UT 84147, telephone (801) 524–6477.

Rodney J. Ottenbreit, Public Affairs Officer, Bureau of Reclamation, Great Plains Regional Office, P.O. Box 36900, Billings, MT 59101, telephone, (406) 657–6218.

SUPPLEMENTARY INFORMATION: In 1987, the Bureau of Reclamation examined the direction of its programs. That examination, "Assessment '87," recognized the need for increased emphasis on improved management of projects and the protection of environmental values. In 1989, President Bush established the management objective for the Department of the Interior "to improve the use and management of the Nation's water resources." A major milestone for accomplishing this objective was to "refine the definition and implementation of the new Bureau of Reclamation program priorities that were outlined in 1987." This milestone has now been reached with completion of the Strategic Plan. The Strategic Plan defines the twenty-five elements of Reclamation's overall program, as well as specific goals and strategies for each element. The details on the specific tasks required to carry out the strategies will be developed in an Implementation Plan for each of the elements. Development of most of the Implementation Plans is presently underway. The Strategic Plan document contains an invitation to provide comments on or input to the development of specific Implementation Plans. Each Implementation Plan will also be available for public distribution after it has been completed.

Dated: August 7, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–19458 Filed 8–13–92; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Extension of the Public Comment Period for the Draft Revised Grizzly Bear Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service is extending the comment period for review of the Draft Revised Grizzly Bear Recovery Plan.

DATES: Comments on the draft recovery plan must be received on or before October 8, 1992.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Dr. Chris Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS312, University of Montana, Missoula, Montana 59812. Written comments and materials regarding this draft recovery plan should be sent to Dr. Chris Servheen at the above address. Comments and materials received are available on request for public inspection, by appointment, during

normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Chris Servheen (see ADDRESSES above) at telephone (406) 329–3233.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) published a Notice of Availability of the Draft Revised Grizzly Bear Recovery Plan which appeared in the **Federal Register** on July 8, 1992 (57 FR 30226). It established a public comment period ending on August 24, 1992. Due to the complexity and length of the plan, the Service has received requests for extending the comment period. The comment period is, therefore, extended to October 8, 1992.

PUBLIC COMMENTS SOLICITED: The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Dated: August 6, 1992.

William F. Hartwig,

Acting Regional Director, Region 6.

[FR Doc. 92–19435 Filed 8–13–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the White Bladderpod for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the white bladderpod (*Lesquerella pallida*) which the Service listed as an endangered species on March 11, 1987. The plant, white bladderpod is known from six sites on private land and a county road right-of-way in San Augustine County, Texas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 28, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Arthur Coykendall, Fish and Wildlife Service Biologist, telephone (512) 888–3346 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a pubic comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The white bladderpod is an endangered species known from six sites on private land and a county road right-of-way in San Augustine County, Texas. It is restricted to open areas where outcrops of the Weches Formation occur. The species is threatened by invasion of woody species into its limited habitat and competition with weedy plant species—both promoted by overgrazing—, conversion of its habitat to improved pasture, quarrying of Weches outcrops for gravel, and possible extirpation of its small populations from successive years of unfavorable growing conditions.

The white bladderpod recovery plan has been reviewed by the appropriate Service staff in Region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 30, 1992.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 92–19457 Filed 8–13–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of Draft Maps of Hawaii Areas Under Consideration for Inclusion in the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of section 6 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503), the Secretary of the Interior is required to provide to Congress maps identifying the boundaries of those undeveloped coastal barriers of the United States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the Coastal Barrier Resources System. Recommendations made by the Secretary will be advisory only; any changes to the Coastal Barrier Resources System will require an act of Congress. This notice is to announce the availability of draft Hawaii maps with supporting delineation criteria and a report to Congress for public review and comments. Appendix A of this notice lists the potential Coastal Barrier Resources System Units along Hawaii.

DATES: Comments should be received no later than November 9, 1992.

ADDRESSES: H. Dale Hall, Assistant Regional Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Dennis D. Peters, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6154.

SUPPLEMENTARY INFORMATION: On October 18, 1982, President Reagan signed the Coastal Barrier Resources

Act (CBRA) into law (Pub. L. 97–348). Section 4 of CBRA establishes the Coastal Barrier Resources System (System) as referred to and adopted by Congress, and sections 5 and 6 prohibit all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. These provisions of the Act became effective immediately. The statutory ban on the sale of new Federal flood insurance for new construction or substantial improvements within the System went into effect on October 1, 1983.

On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act of 1990 (CBIA). Section 6 of the CBIA directs the Secretary of the Interior to prepare a study which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States and to prepare maps identifying undeveloped coastal barriers bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System. In addition, Congress has directed the Secretary to prepare a report which examines the need for protecting undeveloped coastal barriers along the Pacific coast.

An existing 1988 report, Report to Congress: Coastal Barrier Resources System, Coastal Barriers of the Pacific Coast: Summary Report, by Dr. Joel W. Hedgpeth, will be reviewed and revised as necessary.

The criteria used to map the undeveloped coastal barriers along the Pacific coast are described in this notice. Draft maps, as well as the report, will be provided upon request (See addresses provided above). The maps may be inspected at, and hand delivered comments may be taken to, Regional Office, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, 4th Floor East Wing, Portland, Oregon. Copies of the maps may be inspected, during normal business hours, at the following locations: U.S. Fish and Wildlife Service, Honolulu Field Office, 300 Ala Moana Boulevard, Honolulu, Hawaii 96813, (808) 541–2749, and Office of State Planning, Hawaii Coastal Zone Management Program, Capitol Center, 2d Floor, 1177 Alakea Street, Honolulu, Hawaii, (808) 587–2876.

Definition of Coastal Barriers for Purposes of the Study

This section presents a statement of definitions used to identify undeveloped coastal barriers for purposes of the Report to Congress required by section 6 of the CBIA. The study's definition is based on guidance provided by section 3(1) of CBRA.

A. General Definition

Based on the definition of a coastal barrier contained in section 3(1) of the CBRA, a coastal barrier is a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that:

- Is subject to wave, tidal, and wind energies, and
- Protects landward aquatic habitats including adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

B. Types of Coastal Barriers

Coastal barriers may be described generally, as in the CBRA definition, with respect to their relationship to the mainland as bay barriers, tombolos, barrier spits, barrier islands and fringing mangroves. The "mainland" includes the continental landmass as well as large islands. The accepted scientific classification is:

1. Bay Barriers—coastal barriers that connect two headlands, and enclose a pond, marsh, or other aquatic habitat.
2. Tombolos—sand or gravel beaches that connect one or more offshore islands to each other or to the mainland.
3. Barrier Spits—coastal barriers that extend into open water and are attached to the mainland at only one end. They can develop into bay barriers if they grow completely across a bay or other aquatic habitat. On the other hand, bay barriers can become spits if an inlet is created.
4. Barrier Islands—coastal barriers completely detached from the mainland. Barrier spits may become barrier islands if their connection to the mainland is severed by creation of a permanent inlet. The barrier island represents a broadened barrier beach, commonly sufficiently above high tide to have dunes, vegetated zones, and wetland areas.
5. Fringing mangroves—bands of mangrove along subtropical or tropical mainland shores in areas of low wave energy. Many of these areas are located behind coral reefs, which, together with the mangroves themselves, afford significant protection for the mainland from storm impact.

C. Composition of Coastal Barriers

Generally, coastal barriers consist entirely of unconsolidated sediment, composed of sand or gravel, but sometimes include silt, cobbles, or large rocks.

D. Factors that Shape Coastal Barriers

Wind, waves, and tides are the immediate forces that maintain and modify coastal barriers. The action of wind, wave (directly and by creating littoral, onshore-offshore or other currents), and tidal energy on unconsolidated sedimentary materials generally results in continuous linear or curvilinear features—a beach ridge or berm located along the unprotected side of the coastal barrier.

Where a suitable sediment source and sufficient wind, wave and tidal energy exist, secondary coastal barriers occasionally develop on the mainland side or large bays or lagoons behind coastal barrier systems. These secondary coastal barriers are included in the inventory.

E. Associated Aquatic Habitat

Associated aquatic habitat includes adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

Definition of "Undeveloped"

A coastal barrier is considered undeveloped if it contains less than one (1) structure per five (5) acres that is "roofed and walled" and covers at least 200 square feet and constructed in conformance with Federal, State, or local legal requirements. However, units containing fewer than roughly one structure per five acres of fastland, can be considered developed when geomorphic and ecological processes are altered to the extent that the long-term perpetuation of the coastal barrier is threatened by one or more of the following:

(a) Extensive shoreline manipulation or stabilization;

(b) Pervasive canal construction and maintenance;

(c) Major dredging projects and resulting sedimentary deposits;

(d) Intensive capitalization development projects which effectively establish a commitment to stabilize an area, even though there are few actual structures.

The Act does not require an entire coastal barrier to be included, and specifically allows for inclusion of undeveloped portions of coastal barriers. An undeveloped portion of a coastal barrier is included if there exists a minimum of approximately one-quarter mile of shoreline on the unprotected (seaward) side of the coastal barrier. Each unit must include an undeveloped area extending through the fastland from the beach to the associated landward aquatic habitat, and must independently satisfy the definitional criteria in section 3(1)(A) of the Act.

Delineation of Coastal Barrier Units

Undeveloped coastal barriers of at least one-quarter mile in shoreline length and their associated aquatic habitats were delineated using aerial photography, U.S. Fish and Wildlife Service National Wetlands Inventory maps and U.S. Geological Survey 7.5' quadrangle maps.

A. Delineation of the Landward Boundary

The coastal barrier unit boundary is a line drawn perpendicular to the unprotected (seaward) side of the fastland and extends landward to include the associated aquatic habitat. For partially developed coastal barriers, the boundary was drawn at the edge of the development. The entire associated aquatic habitat was included in cases where the coastal barrier is 50 percent or more undeveloped, as determined by the perpendicular projection of developed versus undeveloped portions of the unprotected shoreline. Isolated clusters of approximately 10 or more structures were excluded from units where the impact of the development on geological and ecological processes is local and confined primarily to the fastland on which the structures are located. A boundary is drawn around the cluster of development to exclude it from the unit.

The landward boundary is a continuous line that follows the interface between the aquatic habitat and the mainland. In areas with aquatic habitats extending for many miles inland, geologic features such as the next dune line or natural constrictions in aquatic habitats and man-made features such as highways, dikes and levees were used to determine landward boundaries. In addition the landward boundary was normally drawn not to exceed an elevation of 20 feet above the mean high water level of the system. The maximum extent of the landward boundary was 5 miles for wetlands (exposed or vegetated portions of bays, freshwater wetlands) and was measured from the high water line on the unprotected (seaward) side of the coastal barrier. For open water (subtidal bays, large lakes) the maximum landward extent was one mile and was measured either from the farthest landward extent of wetlands on the protected side of the barrier or from the mean high water line on the unprotected side of the barrier.

B. Delineation of Seaward Side

The unit contains the entire sand-sharing system, including the beach, shoreface, and offshore bars. The sand-sharing system of coastal barriers is normally defined by the 30-foot bathymetric contour. In large coastal embayments the sand-sharing system is more limited in extent. In these cases, the sand-sharing system is defined by the 20-foot bathymetric contour or a line approximately one mile seaward of the shoreline, whichever is nearer the coastal barrier.

APPENDIX A—PROPOSED HAWAII COASTAL BARRIER RESOURCES SYSTEM UNITS

Island and number	Location	Map name
Hawaii:		
HI-01-91	Pololu Valley	Honokane.
HI-02-91	Waimanu Bay	Honokane.
HI-03-91	Waipio Bay	Kukuihaele.
HI-04-91	Honokohau Bay	Keahole Point.
HI-05-91	Kiholo Bay	Kiholo.
HI-06-91	Makaiwa	Puu Hinai/Anaehoomalu.
Maui:		
HI-07-91	Waihee	Wailuku/Paia.
HI-08-91	Paukukalo	Wailuku/Paia.
HI-09-91	Kanaha Pond	Wailuku/Paia.
HI-10-91	Kealia Pond	Maalaea.
Molokai:		
HI-11-91	Pipio Fishpond	East Half Molokai East.
HI-12-91	Keawanui Fishpond	West Half Molokai East.
HI-13-91	Paialoa Fishpond	West Half Molokai East.
HI-14-91	Lepelepe	West Half Molokai East.
HI-15-91	Pahoa	West Half Molokai East.
HI-16-91	Pelekunu Bay	West Half Molokai East.
HI-17-91	Alii Fishpond	West Half Molokai East.
HI-18-91	Kamiloloa	East Half Molokai West.
HI-19-91	Kaunakakai	East Half Molokai West.
HI-20-91	Kahanui	East Half Molokai West.
Kauai:		
HI-21-91	Wainiha Bay	Haena/Hanalei.
HI-22-91	Lumahai Beach	Haena/Hanalei.
HI-23-91	Puu Poa Point Area	Haena/Hanalei.
HI-24-91	Kilauea Bay	Anahola.
Oahu:		
HI-25-91	Kii NWR	Kahuku.
HI-26-91	Kahana Bay	Kahana.
HI-27-91	Molii Pond	Kahana.
HI-28-91	Waiahole Beach	Kaneohe.
HI-29-91	Heeia	Kaneohe.
HI-30-91	Nuupia Pond	Mokapu.
Niihau:		
HI-31-91	Leahi Point	Niihau South.
HI-32-91	Nonopapa	Niihau South.
HI-33-91	Kiekie	Niihau South.
HI-34-91	Kaununui	Niihau North.

Dated: August 10, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-19437 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 1, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 31, 1992.

Beth L. Savage,

Chief of Registration, National Register.

ALABAMA

Butler County

Howard, John W., House and Outbuildings, AL 10E, Greenville vicinity, 92001090

Madison County

Butlers' Store 5498 Main Dr., New Hope, 92001089

Tuscaloosa County

Queen City Pool and Pool House Jct. of Queen City Ave. and Riverside Dr., Tuscaloosa, 92001088

ARKANSAS

Baxter County

Buford School Building (Public Schools in the Ozarks MPS), AR 126, Buford, 92001128

Benton County

Coal Gap School (Public School in the Ozarks MPS), Co. Rd. 920, Larue vicinity, 92001123

Cleburne County

Quitman High School Building (Public Schools in the Ozarks MPS), AR 25, *Quitman, 92001126*

Quitman Home Economics Building (Public Schools in the Ozarks MPS), 2nd Ave., *Quitman, 92001127*

Independence County

Jamestown School (Public Schools in the Ozarks MPS), N of AR 230, Jamestown, 92001106

Locust Grove School (Public Schools in the Ozarks MPS), AR 230 S of jct. with AR 25, Locust Grove, 92001107

Moorefield School (Public Schools in the Ozarks MPS), N side of Ham St., Moorefield, 92001109

Thida Grove School (Public Schools in the Ozarks MPS), Co. Rd. 20, Thida, 92001108

Marion County

Aggie Hall (Public Schools in the Ozarks MPS), Co. Rd. 9, Bruno, 92001115

Aggie Workshop (Public Schools in the Ozarks MPS), AR 235 Spur, Bruno, 92001113

Bruno School Building (Public Schools in the Ozarks MPS), Co. Rd. 9, Bruno, 92001112

Eros School Building (Public Schools in the Ozarks MPS), Co. Rd. 9, Eros, 92001110

Fairview School Building (Public Schools in the Ozarks MPS), Co. Rd. 203, Fairview, 92001116

Hirst—Mathew Hall (Public Schools in the Ozarks MPS), AR 235 Spur, Bruno, 92001114

Pyatt School Building (Public Schools in the Ozarks MPS), Co. Rd. 12, Pyatts, 92001111

Stone County

Alco School (Public Schools in the Ozarks MPS), Just N of AR 66, Alco, 92001125

Luber School (Public Schools in the Ozarks MPS), Co. Rd. 214, Luber, 92001124

Van Buren County

Damascus Gymnasium (Public Schools in the Ozarks MPS), AR 285, Damascus, 92001122

Washington County

Agriculture Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001098

Business Administration Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001099

Chemistry Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001100

Chi Omega Greek Theatre—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Dickson St., Fayetteville, 92001101

Dodson Memorial Building (Public Schools in the Ozarks MPS), Jct. of Pleasant St. and Emma Ave., NE corner, Springdale, 92001118

Durham School (Public Schools in the Ozarks MPS), Co. Rd. 183, Durham, 92001121

Fishback School (Public Schools in the Ozarks MPS), AR 68N, Springdale, 92001120

Home Economics Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), W of Campus Dr., Fayetteville, 92001102

Men's Gymnasium—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Garland Ave., Fayetteville, 92001103

Spring Valley School District 120 Building (Public Schools in the Ozarks MPS), Co. Rd. 379, Spring Valley, 92001119

Student Union Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS) Jct. of Campus Dr. and Maple St., SE corner, Fayetteville, 92001104

Tontitown School Building (Public Schools in the Ozarks MPS), AR 412, Tontitown, 92001117

Walker, Vol. Library—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001105

DELAWARE

New Castle County

Archmere, 3600 Philadelphia Pike, Claymont, 92001143

Armor, James, House, 4905 Lancaster Pike, Christiana Hundred, Wilmington vicinity, 92001141

Brook Ramble (Dwellings of the Rural Elite in Central Delaware MPS), Jct. of Co. Rds. 458 and 459, Appoquinimink Hundred, Townsend vicinity, 92001137

Cloud, Abner, House, 14 Ravine Rd., Brandywine Hundred, Wilmington vicinity, 92001144

Green Meadow (Dwellings of Rural Elite in Central Delaware MPS), Thomas Landing Rd. (DE 440), Appoquinimink Hundred, Odessa vicinity, 92001132

Hill Island Farm (Dwellings of the Rural Elite in Central Delaware MPS), 3379 Dupont Pkwy. (US 13), Appoquinimink Hundred, Odessa vicinity, 92001139

Johnson Home Farm (Dwellings of the Rural Elite in Central Delaware MPS), Co Rd. 453 E of jct. with DE 9, Blackbird Hundred, Taylor's Bridge vicinity, 92001133

Mount Pleasant (Dwellings of the Rural Elite in Central Delaware MPS), Sunnyside Rd. (Rt. 90), Duck Creek Hundred, Smyrna vicinity, 92001134

Savin—Wilson House (Dwellings of the Rural Elite in Central Delaware MPS), Co. Rd. 326, between DE 12 and Co. Rd. 83, Duck Creek Hundred, Smyrna vicinity, 92001135

Springer, Charles, Tavern, 4921 Lancaster Pike, Christiana Hundred, Wilmington vicinity, 92001142

Thomas, David W., House (Dwellings of the Rural Elite in Central Delaware MPS), 326 Thomas Landing Rd., Appoquinimink Hundred, Odessa vicinity, 92001136

Vandyke—Heath House (Dwellings of the Rural Elite in Central Delaware MPS), 385 Green Spring—Vandyke Rd. (Co. Rd. 47), Appoquinimink Hundred, Townsend vicinity, 92001130

Windsor (Dwellings of the Rural Elite in Central Delaware MPS), 1060 Dutch Neck Rd., St. Georges Hundred, Port Penn vinicity, 92001131

GEORGIA

Bartow County

Cassville Post Office, 1813 Cassville Rd. (Old Dixie Hwy.), Cassville, 9201129

MISSISSIPPI

Wilkinson County

Centerville Historic District, Roughly bounded by Cherokee, Laurel and St. Mary Sts., Centerville, 92001091

MISSOURI

St. Louis Independent City

Eliot School (St. Louis Public Schools of William B. Ittner MPS), 4242 Grove, St. Louis (Independent City), 92001092

Emerson, Ralph Waldo, School (St. Louis Public Schools of William B. Ittner MPS), 5415 Page Blvd., St. Louis (Independent City), 92001145

Field, Eugene, School (St. Louis Public Schools of William B. Ittner MPS), 4466 Olive, St. Louis (Independent City), 92001093
Jackson School (St. Louis Public Schools of William B. Ittner MPS), 1632 Hogan St., St. Louis (Independent City), 92001094
Mann, Horace, School (St. Louis Public Schools of William B. Ittner MPS), 4947 Juniata, St. Louis (Independent City), 92001095
Rock Spring School (St. Louis Public Schools of William B. Ittner MPS), 3974 Sarpy Ave., St. Louis (Independent City), 92001097
Wyman, Edward, School (St. Louis Public Schools of William B. Ittner MPS), 1547 S. Teresa, St. Louis (Independent City), 92001096

NEW JERSEY

Morris County

Mott Hollow, Roughly, Gristmill Rd. from Millbrook Ave. to Zandep Ln. and adjacent area along Millbrook, Randolph Township, Millbrook vicinity, 92001085

NORTH CAROLINA

Forsyth County

Kapp, John Henry, Farm, N side NC 65, 0.1 mi. E of jct. with NC 67 (4647 Bethania—Tobaccoville Rd.). Bethania vicinity, 92001087

New Hanover County

Carolina Place Historic District, Bounded by Market St., Wallace Park, Gibson Ave., Wrightsville Ave. and S. Eighteenth St., Wilmington, 92001086

OHIO

Cuyahoga County

Forest City Bank Building, 1400 W. Twenty-fifth St., Cleveland, 86003827

WISCONSIN

Green Lake County

Huron Street Historic District, Roughly, Huron St. from Fox R. to 124 E. Huron, including adjacent side streets, Berlin, 92001140

[FR Doc. 92–19275 Filed 8–13–92; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 70 (Amendment No. 10)]

Western Motor Tariff Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Western Motor Tariff Bureau, Inc. (Western or petitioner) has filed a petition seeking approval of amendments to its ratemaking agreement approved under 49 U.S.C. 10706(b). The amendments would: (1) Create the California-Mexico Dry Freight Committee to simplify procedures involving traffic moving between points in California and Mexico; and (2) enable Western to broaden its services as a publishing agent to include all motor common carriers that file and post tariffs, mileage guides, or freight classifications with Federal and State regulatory bodies. The Commission has issued a decision proposing to approve the amendments, subject to public comment.

DATES: Comments from interested persons are due September 14, 1992. Replies are due 15 days thereafter. If no timely adverse comments are received, the sought relief will become effective automatically at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a further decision.

ADDRESSES: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 70 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission also must be served on applicant's representative. .

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610, (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Copies of Western's approved agreement and the amendments are available for public inspection and copying at the Public Docket Room (room 1227 of the Commission in Washington, DC, and from Western's representative: William E. Kenworthy, 1920 N Street, NW., suite 420, Washington, DC 20036.

Western's proposed amendments relating to the establishment of a rate bureau committee responsible for procedures governing international traffic between California and Mexico will result in steamlined procedures, tariff simplification, and facilitated ratemaking over a significant geographic area. The proposal is similar in impact to other rate bureau amendments approved by the Commission involving international traffic. See, section 5a Application No. 60, Rocky Mountain Motor Tariff Bureau, Inc.—Agreement (not printed), served November 14, 1991. The amendments which permit the broadening of Western's services as a publishing agent provide petitioner with an opportunity to enhance its revenues in areas not subject to the Commission's jurisdiction. The Commission tentatively has found the proposals here to be in the public interest.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: August 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19448 Filed 8–13–92; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 32028]

Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P.—Control Exemption—the Pittsburgh & Conneaut Dock Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pusuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition by Blackstone Capital Partners L.P. and Blackstone Transportation Partners L.P. of control of the Pittsburgh and Conneaut Dock Company. The exemption is subject to standard employee protective conditions. The Commission further finds that 49 U.S.C. 11321 (Panama Canal Act) is not applicable to the transaction.

DATES: The exemption is effective on September 14, 1992. Petitions to stay must be filed by August 24, 1992, and petitions to reopen must be filed by September 3, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32028 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. (2) Petitioners, representatives: John W. Barnum, Anne D. Smith, White & Case, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase

a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19441 Filed 8–13–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32131]

Burlington Northern Railroad Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Burlington Northern Railway Company (BN) has filed a notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights over Norfolk and Western Railway Company (NW) lines from NW Milepost SD–334.6 at McCoy, IA, through the crossing of Iowa Highway 46, to BN Milepost 67.3 at East Des Moines, IA, and between BN Mileposts 67.5 and 68.3 in Des Moines, IA, all located in Polk County, IA. The purpose of the trackage rights is to improve operating efficiencies. The exemption became effective on August 11, 1992, and the parties intend to consummate the transaction on August 24, 1992.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Cost Ry., Inc.—Lease and Operate, 360 I.C.C 653 (1980).

Dated: August 10, 1992

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19440 Filed 8–13–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–1 (Sub-No. 243X)]

Chicago and North Western, Transportation Company—Abandonment Exemption—Between Beloit, WI and South Beloit, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 1.73 mile line of railroad between milepost 90.53, near South Beloit, IL and milepost 92.26, near Beloit, WI, in Winnebago County, IL and Rock County, WI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line is not used for movement of overhead traffic as all overhead traffic has recently been rerouted to alternate lines (the line has been stub-ended since the Beloit-Evansville line was abandoned in 1979); (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 13, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 24, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 3, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert T. Opal, Commerce Counsel, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606–1551.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 19, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 4, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19436 Filed 8–13–92; 8:45 am]

BILLING CODE 7035–01–M

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[1] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement
The title of the recordkeeping/reporting requirement
The OMB and/or Agency identification numbers, if applicable
How often the recordkeeping/reporting requirement is needed
Whether small businesses or organizations are affected
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent
The number of forms in the request for approval, if applicable
An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202–523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202–395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration
Radiation Sampling and Exposure Records
1219–0003
Weekly; annually
Underground uranium mine operators and metal and nonmetal mine operators where radon daughter concentrations exceed 0.3 WL 1,000 respondents; 7.75 hours per response; 7,750 total burden hours

Requires operators of uranium mines and metal and nonmetal mines, where concentrations of radon daughters exceeds 0.3 WL, to calculate, record, and report to MSHA individual miner's exposure to concentrations of radon daughters. Records are maintained by the mine operator and are submitted to MSHA annually.

Signed at Washington DC this 11th day of August, 1992.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 92–19406 Filed 8–13–92; 8:45 am]
BILLING CODE 4510–43–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC. this 27th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Ansewn Shoe Co (Co)	Howland, ME	07/27/92	06/27/92	27,528	Handsewn Shoe Uppers.
Ansewn Shoe Co (Co)	Showhegan, ME	07/27/92	06/09/92	27,529	Handsewn Shoe Uppers.
Basf Corp. Information Systems (Wkrs)	Bedford, MA	07/27/92	07/16/92	27,530	Audio & Computer Tapes, Diskettes
Coalinga Corp (Wrks)	Ira, TX	07/27/92	07/15/92	27,531	Crude Oil.
Sackville Mills, Inc (ACTWU)	Wallingford, PA	07/27/92	07/01/92	27,532	Interlinings For Apparel.
Proctor Products (ACTWU)	Bourbon, MO	07/27/92	07/01/92	27,533	Shoe Counters.
Snow's Card & Gift Shop (Wkrs)	Birmingham, AL	07/27/92	07/07/92	27,534	Frillie Necklace & Earrings.
Toby Sportswear Inc. (Wkrs)	York, PA	07/27/92	07/15/92	27,535	Childrens Dresses and Sportswear.
General Electric Aerospace (Wkrs)	Moorestown, NJ	07/27/92	07/17/92	27,536	Connectors.
Sterling Plastics (Wkrs)	Mountainside, NJ	07/27/92	07/10/92	27,537	Injection Molded Plastic Products.
Unocal Corp., Southwestern Reg Off (Co)	Midland, Texas	07/27/92	07/15/92	27,538	Oil and Gas.
Mid Plains Div./Total Petrol., Inc. (Wkrs)	Oklahoma City, OK	07/27/92	03/16/92	27,539	Refined Petroleum Products.
Adobe Mining (Wkrs)	Grove City, PA	07/27/92	07/19/92	27,540	Coal Mining.
KBA Motter Corp (Wkrs)	York, PA	07/27/92	07/13/92	27,541	Printing Presses
Unocal Corp., Andrews District (Co)	Andrews, TX	07/27/92	07/15/92	27,542	Oil and Gas.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Unocal Corp., Farmington District (Co)	Farmington, NM	07/27/92	07/15/92	27,543	Oil and Gas.
Unocal Corp., Midland District (Co)	Levelland, TX	07/27/92	07/15/92	27,544	Oil and Gas.

[FR Doc. 92-19404 Filed 8-13-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,195]

Bull Printing Systems (BPS) Oklahoma City, OK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Bull Printing Systems (BPS), Oklahoma City, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,195; Bull Printing Systems (BPS)
Oklahoma City, Oklahoma (August 5, 1992)

Signed at Washington, DC this 7th day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-19403 Filed 8-13-92; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

Appendix

Peitioner: Union/workers/firm—	Location	Date received	Date of petition	Petiion No.	Articles produced
Conoco, Inc., EPNA (wkrs)	Midland, TX	08/03/92	07/20/92	27,545	Crude oil and natural gas.
Marathon Oil Co (wkrs)	Houston, TX	08/03/92	07/23/92	27,546	Oil and gas.
Eastern States Exploration/Prod. (wkrs)	Snow Shoe, PA	08/03/92	07/27/92	27,547	Natural gas.
Fina Oil & Chemical Co (Hqrs) (wkrs)	Dallas, TX	08/03/92	07/22/92	27,548	Crude oil and natural gas.
Fina Oil & Chemical Co (So. La Div) (wkrs)	Houston, TX	08/03/92	07/22/92	27,549	Crude oil and natural gas.
Fina Oil & Chemical Co (So. Tx Div) (wkrs)	Houston, TX	08/03/92	07/22/92	27,550	Crude oil and natural gas.
Fina Oil & Chemical Co (E. Tx Div) (wkrs)	Tyler, TX	08/03/92	07/22/92	27,551	Crude oil and natural gas.
Kawneer Co (ABGWU)	Harrisonburg, VA	08/03/92	07/22/92	27,552	Curtain & window wall extensions.
Dyac Corp., dba Joseph Dyson & Sons (IFWU)	Painesville, OH	08/03/92	07/21/92	27,553	Forgings.
Sew Wright Apparel (Co)	Miami, OK	08/03/92	07/06/92	27,554	Ladies and mens' jeans.
United Gas Pipeline Co (wkrs)	Houston, TX	08/03/92	07/22/92	27,555	Natural gas transmission and marketing.
Roydon Wear, Inc (wkrs)	Soperton, GA	08/03/92	07/20/92	27,556	Children's jeans and shorts.
Blocker Services, Inc (wkrs)	Alice, TX	08/03/92	07/24/92	27,557	Oil and gas drilling.
Trexpro, Inc (wkrs)	Sedalia, CO	08/03/92	07/22/92	27,558	Oil, gas exploration.
Grasso Supply Co (wkrs)	Houston, TX	08/03/92	07/21/92	27,559	Sell drilling parts for oil, gas.
General Electric Aerospace Oper. (IUE)	Pittsfield, MA	08/03/92	07/23/92	27,560	Defense systems.
Outer Stuff (wkrs)	Altoona, PA	08/03/92	07/20/92	27,561	Children's coats and jackets.
BP Exploration (Alaska), Inc (Co)	Anchorage, AK	08/03/92	07/21/92	27,562	Oil and gas exploration, prodiction.
Chile Offshore Corp (wkrs)	Houston, TX	08/03/92	07/22/92	27,563	Crude oil and natural gas drilling.
Giddings & Lewis (UIW)	Lima, OH	08/03/92	07/20/92	27,564	Lathes and component parts.
Engineered Well Services, Inc (Co)	Dickinson, ND	08/03/92	07/22/92	27,565	Oil service.
Eastman Christensen (wkrs)	Houston, TX	08/03/92	07/24/92	27,566	Oil, gas drilling.
Hosking Geophysical Corp. (Co)	Mt. Pleasant, MI	08/03/92	07/24/92	27,567	Oil and gas.
Multi-Shot, Inc (wkrs)	Broussard, LA	08/03/92	07/20/92	27,568	Oil and gas.
Thomas & Betts Corp. (wkrs)	Iowa City, IA	08/03/92	07/20/92	27,569	Comuter connectors.
Brown Shoe Company (Co)	Clayton, MO	08/03/92	07/17/92	27,570	Administrative services.
HOMCO International, Inc (Co)	Wilburton, OK	08/03/92	07/20/92	27,571	Oil and gas.
Quebec Sports (wkrs)	Allentown, PA	08/03/92	07/21/92	27,572	Children's sportswear.
Shape, Inc (wkrs)	Biddeford, ME	08/03/92	07/13/92	27,573	Audio and video casettes.
Sutton Shirt Corp (wkrs)	Burkesville, TX	08/03/92	07/20/92	27,574	Men's flannel shirts.

Appendix—Continued

Peitioner: Union/workers/firm—	Location	Date received	Date of petition	Petiion No.	Articles produced
Dailey Petroleum Services, Inc. (wkrs)	Conroe, TX	08/03/92	07/13/92	27,575	Oilfield equipment.
Whitaker Oil Tools (wkrs)	Odessa, TX	08/03/92	07/09/92	27,576	Rent tools for oil industry.
Briggs & Stratton Corp (AIW)	Menomonee Falls, WI	08/03/92	07/23/92	27,577	Small cast iron engines.
Briggs & Stratton Corp (AIW)	Wauwatosa, WI	08/03/92	07/23/92	27,578	Small cast iron engines.
Briggs & Stratton Corp (AIW)	West Allis, WI	08/03/92	07/23/92	27,579	Small cast iron engines.
Shape, Inc. (wkrs)	Kennebunk, ME	08/03/92	07/13/92	27,580	Audio and video casettes.
Fina Oil & Chemical Co (W. Tx Div) (wkrs)	Midland, TX	08/03/92	07/22/92	27,581	Crude oil and natural gas.
Fina Oil & Chemical Co (offshore) (wkrs)	Houston, TX	08/03/92	07/22/92	27,582	Crude oil and natural gas.

[FR Doc. 92–19405 Filed 8–13–92; 8:45am]
BILLING CODE 4510–30–M

[TA–W–27,273]

John E. Chance & Associates, Inc., Lafayette, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at John E. Chance & Associates, Inc., Lafayette, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,273; John E. Chance & Associates, Inc.
Lafayette, Louisiana (August 4, 1992)

Signed at Washington, DC this 7th day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–19402 Filed 8–13–92; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–26, 441 Tulsa, OK TA–W–26, 442 Wheatland, OK TA–W–26, 443 Belle Chasse, LA]

Quarles Drilling Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating at Various Locations in the Following States: TA–W–26, 443A Texas, TA–W–26, 443B New Mexico, TA–W–26, 443C Mississippi, TA–W–26, 443D Wyoming, TA–W–26, 443E Louisiana (except Belle Chasse), TA–W–26, 443F Oklahoma (except Wheatland and Tulsa)

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on December 9, 1991 applicable to all workers of Quarles Drilling Corporation, Tulsa and Wheatland, Oklahoma and Belle Chase, Louisiana. The notice was published in the **Federal Register** on December 27, 1991 (56 FR 67104).

At the request of the State Agency the Department is amending the subject certification to include the States of Texas, New Mexico, Mississippi, Wyoming and other locations in Oklahoma and Louisiana.

Also, the Department discovered a coverage overlap with these certifications and TA–W–21, 934, TA–W–21, 935 and TA–W–21, 936 which expired on February 23, 1991. Therefore, to correct this period of double coverage, the Department is changing the impact date for the subject firm to February 23, 1991.

The amended notice applicable to TA–W–26, 441, TA–W–26, 442 and TA–W–26, 443 is hereby issued as follows:

All workers of Quarles Drilling Corporation, Tulsa, Oklahoma; Wheatland, Oklahoma; Bell Chase, Louisiana and operating at various locations in the States of Texas, New Mexico, Mississippi, Wyoming, Oklahoma, except Tulsa and Wheatland and Louisiana, except Belle Chase, who became totally or partially separated from employment on or after February 23, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington DC, this 5th day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–19401 Filed 8–13–92; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–27,079 Woodward, OK; TA–W–27,079A Dallas, TX; TA–W–27,079B All Other Locations in Texas]

Supreme Well Service Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on June 3, 1992, applicable to all workers of Supreme Well Service. The notice was published in the **Federal Register** on June 26, 1992 (57 FR 28706).

At the request of the State Agency the Department reviewed the subject certification. The findings show that workers were laid off at other locations in Texas. Therefore, the Department is amending the subject certification to include all other locations in Texas.

The intent of the Department's certification is to include all workers of Supreme Well Service Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–27,079 and TA–W–27,079A is hereby issued as follows:

All workers of Supreme Well Service Company, Woodward, Oklahoma; Dallas, Texas and other locations in Texas who became totally or partially separated from employment on or after March 16, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–19400 Filed 8–13–92; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar

character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume II

Texas:
- TX91-65 (Aug. 14, 1992)..... p. All.
- TX91-66 (Aug. 14, 1992)..... p. All.
- TX91-67 (Aug. 14, 1992)..... p. All.
- TX91-68 (Aug. 14, 1992)..... p. All.
- TX91-70 (Aug. 14, 1992)..... p. All.
- TX91-71 (Aug. 14, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
- FL91-45 (Feb. 22, 1991)..... p. 211, pp. 212-213.

Kentucky:
- KY91-31 (Feb. 22, 1991)..... p. All.

New York:
- NY91-1 (Feb. 22, 1991)..... p. 773, pp.774-776.
- NY91-18 (Feb. 22, 1991)..... p. 931, pp. 932-933.

Volume II

Arkansas:
- AR91-1 (Feb. 22, 1991)..... p. All.
- AR91-8 (Feb. 22, 1991)..... p. All.

Illinois:
- IL91-2 (Feb. 22, 1991)..... p. 97, pp.100, 103-104, p. 114a.
- IL91-6 (Feb. 22, 1991)..... p. 133, p. 134.
- IL91-8 (Feb. 22, 1991)..... p. 145, p. 148.
- IL91-9 (Feb. 22, 1991)..... p. 153, p. 155.
- IL91-14 (Feb. 22, 1991)..... p. 195, p. 198.

Indiana:
- IN91-6 (Feb. 22, 1991)..... p. 315, pp. 317, 320, pp. 326-334b.

Kansas:
- KS91-6 (Feb. 22, 1991)..... p. All.
- KS91-7 (Feb. 22, 1991)..... p. All.
- KS91-8 (Feb. 22, 1991)..... p. All.
- KS91-9 (Feb. 22, 1991)..... p. All.
- KS91-10 (Feb. 22, 1991)..... p. All.
- KS91-12 (Feb. 22, 1991)..... p. All.
- KS91-13 (Feb. 22, 1991)..... p. All.
- KS91-14 (Feb. 22, 1991)..... p. All.
- KS91-15 (Feb. 22, 1991)..... p. All.
- KS91-16 (Feb. 22, 1991)..... p. All.

Michigan:
- MI91-12 (Feb. 22, 1991)..... p. All.

Nebraska:
- NE91-1 (Feb. 22, 1991)..... p. All.
- NE91-2 (Feb. 22, 1991)..... p. All.
- NE91-11 (Feb. 22, 1991)..... p. All.

Ohio:
- OH91-1 (Feb. 22, 1991)..... p. All.
- OH91-3 (Feb. 22, 1991)..... p. All.
- OH91-28 (Feb. 22, 1991)..... p. All.

Wisconsin:
- WI91-19 (Feb. 22, 1991)..... p. 1285, pp. 1286-1302.

Volume III

Alaska:
- AK91-1 (Feb. 22, 1991)..... p. All.

California:
- CA91-2 (Feb. 22, 1991)..... p. All.
- CA91-4 (Feb. 22, 1991)..... p. All.

Idaho:
- ID91-1 (Feb. 22, 1991)..... p. All.

Utah:
- UT91-20 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year,

regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7th day of August 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–19199 Filed 8–13–92; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 14, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be recorded; (3) who will be required or asked or asked to record; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Section 504 Program Evaluation Workbook.

Frequency of Collection: One-time.

Respondents: State or local governments, non-profit institutions;

Use: Recipients of National Endowment for the Arts grants are required to complete an evaluation of their policy and practices toward the disabled population. This self-evaluation is retained by the grantee.

Estimated Number of Respondents: 3,547.

Average Burden Hours per Response: 4.

Total Estimated Burden: 14,188.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92–19386 Filed 8–13–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Alternative Means of Dispute Resolution; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This Policy statement presents the policy of the Nuclear Regulatory Commission (NRC) on the use of "alternative means of dispute resolution" (ADR) to resolve issues in controversy concerning NRC administrative programs. ADR processes include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration or combination of these processes. These processes present options in lieu of adjudicative or adversarial methods of resolving conflict and usually involve the use of a neutral third party.

DATES: This policy statement is effective on August 14, 1992. Because this is a general statement of policy, no prior notice or opportunity for public comment is required. However, an opportunity for comment is being provided. The period for comments expires on September 28, 1992. Comments received after this date will be considered to the extent practical; however, to be of greatest assistance to the Commission in planning the implementation of its ADR policy, comments should be received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC, between 7:45 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Cutchin IV, Special Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 504–1568.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Administrative Dispute Resolution Act (Public Law 101–552) on November 15, 1990. The Act requires each Federal agency to designate a senior official as its dispute resolution specialist, to provide for the training in ADR processes of the dispute resolution specialist and certain other employees, to examine its administrative programs, and to develop, in consultation with the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS), and adopt, a policy that addresses the use of ADR and case management for resolving disputes in connection with agency programs. Although the Act authorizes and encourages the use of ADR, it does not require the use of ADR. Whether to use or not to use ADR is committed to an agency's discretion. Moreover, participation in ADR processes is by agreement of the disputants. The use of ADR processes may not be required by the agency.

Discussion

The Act provides no clear guidance on when the use of ADR is appropriate or on which ADR process is best to use in a given situation. However, section 581 of the Act appears to prohibit the use of ADR to resolve matters specified under the provisions of sections 2302 and 7121(c) of title 5 of the United States Code, and section 582(b) identifies situations for which an agency shall consider not using ADR. Nevertheless, numerous situations where the use of ADR to resolve disputes concerning NRC programs would be appropriate may arise. A document issued by ACUS in February 1992, entitled "The Administrative Dispute Resolution Act: Guidance for Agency Dispute Resolution Specialists," suggests that the use of ADR may be appropriate in situations involving a particular type of dispute when one or more of the following characteristics is present:

Parties are likely to agree to use ADR in cases of this type;
Cases of this type do not involve or require the setting of precedent;
Variation in outcome of the cases of this type is not a major concern;
All of the significantly affected parties are usually involved in cases of this type;
Cases of this type frequently settle at some point in the process;
The potential for impasse in cases of this type is high because of poor communication among parties, conflicts within parties or technical complexity or uncertainty;
Maintaining confidentiality in cases of this type is either not a concern or would be advantageous;
Litigation in cases of this type is usually a lengthy and/or expensive process; or
Creative solutions, not necessarily available in formal adjudication, may provide the most satisfactory outcome in cases of this type.

As the Act requires, a Dispute Resolution Specialist has been designated, NRC administrative programs have been reviewed, a policy on the use of ADR has been adopted, and the training of certain NRC employees has begun. As the Act requires, input on development of the policy has been sought from ACUS and FMCS. Although the Act does not require it, input on the policy and its implementation is being sought from the public, including those persons whose activities the NRC regulates, because the possible benefits of ADR cannot be realized without the agreement of all parties to a dispute to participate in ADR processes. Among the possible benefits of ADR are:

More control by the parties over the outcome of their dispute than in formal adjudication;
A reduction in levels of antagonism between the parties to a dispute; and
Savings of time and money by resolving the dispute earlier with the expenditure of fewer resources.

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Statement of Policy

This statement sets forth the policy of the Commission with respect to the use of "alternative means of dispute resolution" (ADR) [1] to resolve issues in controversy concerning NRC administrative programs.

The Commission has conducted a preliminary review of its programs for ADR potential and believes that a number of them may give rise to disputes that provide opportunities for the use of ADR in their resolution. For example, as the Commission has long recognized, proceedings before its Atomic Safety and Licensing Boards (ASLBs) provide opportunities for the use of ADR and case management. The Commission has encouraged its ASLBs to hold settlement conferences and to encourage parties to negotiate to resolve contentions, settle procedural disputes and better define substantive issues in dispute. The Commission also has stated that its ASLBs at their discretion should require trial briefs, prefiled testimony, cross-examination plans and other devices for managing parties' presentations of their cases, and that they should set and adhere to reasonable schedules for moving proceedings along expeditiously consistent with the demands of fairness. Statement of Policy on Conduct of Licensing Proceedings, (46 FR 28533, May 27, 1981); CLI–81–8, 13 NRC 452 (1981). In addition, the Commission has indicated that settlement judges may be used in its proceedings in appropriate circumstances. Rockwell International Corporation (Rocketdyne Division), CLI–90–5, 31 NRC 337 (1990).

Opportunities for the use of ADR in resolving disputes may arise in connection with programs such as those involving licensing, contracts, fees, grants, inspections, enforcement, claims, rulemaking, and certain personnel matters. Office Directors and other senior personnel responsible for administering those programs should be watchful for situations where ADR, rather than more formal processes, may appropriately be used and bring them to the attention of the NRC's Dispute Resolution Specialist. Persons who become involved in disputes with the NRC in connection with its administrative programs should be encouraged to consider using ADR to resolve those disputes where appropriate.

The Commission supports and encourages the use of ADR where appropriate. The use of ADR may be appropriate: (1) Where the parties to a dispute, including the NRC, agree that ADR could result in a prompt, equitable, negotiated resolution of the dispute; and (2) the use of ADR is not prohibited by law. The NRC's Dispute Resolution Specialist is available as a resource to assist Office Directors and other senior personnel responsible for administering NRC programs in deciding whether use of ADR would be appropriate. That individual should receive the cooperation of other senior NRC personnel: (1) In identifying information and training needed by them to determine when and how ADR may appropriately be used; and (2) in implementing the Commission's ADR policy.

The Commission believes that certain senior NRC personnel should receive training in methods such as negotiation, mediation and other ADR processes to better enable them: (1) To recognize situations where ADR processes might appropriately be employed to resolve disputes with the NRC; and (2) to participate in those processes.

The Commission recognizes that participation in ADR processes is voluntary and cannot be imposed on persons involved in disputes with the NRC. To obtain assistance in identifying situations where ADR might beneficially be employed in resolving disputes in connection with NRC programs and steps that can be taken to obtain acceptance of NRC's use of ADR, input from the public, including those persons whose activities the Commission regulates, should be solicited.

After a reasonable trial period, the Commission expects to evaluate whether use of ADR has been made where its use apparently was appropriate and whether use of ADR has resulted in savings of time, money and other resources by the NRC. The Commission will wait until some practical experience in the use of ADR has been accumulated before deciding whether specific regulations to implement ADR procedures are needed.

Public Comment

The NRC is interested in receiving comments from the public, including those persons whose activities the NRC regulates, on any aspect of this policy statement and its implementation. However, the NRC is particularly interested in comments on the following:

Specific issues, that are material to decisions concerning administrative programs of the NRC and that result in disputes between the NRC and persons substantially affected by those

[1] ADR is an inclusive term used to describe a variety of joint problem-solving processes that present options in lieu of adjudicative or adversarial methods of resolving conflict. These options usually involve the use of a neutral third party. ADR processes include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration or combinations of these processes.

decisions, that might appropriately be resolved using ADR processes in lieu of adjudication.

Whether employees of Federal government agencies should be used as neutrals in ADR processes or whether neutrals should come from outside the Federal government and be compensated by the parties to the dispute, including the NRC, in equal shares.

Actions that the NRC could take to encourage disputants to participate in ADR processes, in lieu of adjudication, to resolve issues in controversy concerning NRC administrative programs.

Dated at Rockville, Maryland this 7th day of August, 1992.

For the Nuclear Regulatory Commission.

Samul J Chilk,

Secretary of the Commission.

[FR Doc. 92-19454 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

Proposed Generic Communication; NRC Generic Letter: Analog-to-Digital Replacements Under the 10 CFR 50.59 Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a Generic Letter on the replacement of analog safety systems with digital safety systems under 10 CFR 50.59. The Generic Letter states the NRC staff's position that an analog to digital replacement of a safety system is an unreviewed safety question as defined in 10 CFR 50.59 and will require an NRC staff review. The NRC is seeking comments from interested parties regarding both the technical and regulatory aspects of the proposed Generic Letter. In particular, the NRC is interested in existing licensee analog-to-digital replacement procedures and policies, the type and scope of replacements that are planned or underway, and the type and scope of replacements that have already been completed.

DATES: Comment period expires September 14, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P-223, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:14 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clyde Shiraki (301) 504-3101.

SUPPLEMENTARY INFORMATION: A generic letter is an NRC document that transmits information and/or NRC positions to licensees or permit holders regarding matters of safety, safeguards, or environmental significance.

The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The proposed generic letter, in its entirety, is also available for public inspection in the Public Document Room. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Room. The proposed generic letter text is given in its entirety below.

Dated at Rockville, Maryland, 6th this August 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects-III/IV/V, Office of Nuclear Reactor Regulation.

To: All Holders of Operating Licenses or Construction Permits for Nuclear Reactors

Subject: Analog-to-Digital Replacements Under the 10 CFR 50.59 Rule

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to inform licensees of the staff's position that the installation of digital based safety systems (1) is an unreviewed safety question, (2) will require a review by the NRC staff, and (3) cannot be performed under the 10 CFR 50.59 rule. The staff's position applies to all safety-related digital equipment that uses software and in particular, to microprocessor-based systems.

The age degradation of some earlier analog electronic systems and the difficulties in obtaining qualified replacement components for those systems, have prompted some licensees to replace existing analog systems with digital systems. After reviewing a number of these replacement projects and after monitoring digital equipment failures in both nuclear and non-nuclear applications, the staff has identified concerns that apply to the nuclear industry and that could be significant to safety. The staff's concerns stem from the design characteristics of the new digital electronics which could result in new failure modes and system malfunctions that were either not considered during the initial plant design or may not have been evaluated in sufficient detail to support the new digital systems. These concerns include but are not limited to the use of software, the effect of electromagnetic interference, the use and control of configuration equipment, the effect that some digital designs have on diverse trip functions, failures specific to digital hardware, effective system integration, and the commercial dedication of digital electronics. The most notable of these concerns is the use of software.

Software cannot be thought of in the traditional licensing sense, as an electronic component similar to other components installed in redundant channels that are physically and electrically separated from each other. Once a final software package is developed, this exact same package (component) is installed in each redundant channel including any errors and failure mechanisms that may be induced by the software itself. With the exact same software component installed in each redundant channel and/or train of a safety system, the potential now exists to have a failure that could occur at the exact same instant in time (within milliseconds) and could fail in the exact same manner in multiple safety trains. Such a failure would affect the ability of the safety system to perform its intended safety function. This concern is compounded by the use and control of portable configuration equipment that can alter the software in the field. As a result, the concern yields questions regarding the application of the single failure, independence, and separation criteria that were inherent in the original safety analysis. Furthermore, since some digital system designs use common information highways and/or can handle multiple input functions, a single digital equipment failure in one train could affect a number of the available trip functions thereby reducing the availability and functional diversity of existing designs.

These concerns create the possibility of a new malfunction and a possible reduction in the current safety margin and call into question the performance of an analog-to-digital modification of a safety system under the 10 CFR 50.59 rule. Therefore, the staff's position is that the installation of digital based safety systems does represent an

unreviewed safety question that will require a review by the NRC staff and cannot be performed under the 10 CFR 50.59 rule. This position should not be interpreted to discourage the installation of digital systems. However, the staff's position does reflect the regulatory mechanism by which such a modification can be performed, and the potential safety significance of digital equipment failures.

Backfit Discussion

The staff's position is necessary to ensure compliance with 10 CFR 50.59. Therefore, a backfit analysis is not required in accordance with 10 CFR 50.109 (a)(4)(i).

Dated at Rockville, Maryland, the 6th of August 1992.

For the Nuclear Regulatory Commission.

John N. Hannon, Director,

Project Directorate III-3, Division of Reactor Projects-III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19329 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

Update of Activities on Performance Demonstration Initiative; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with the staffs of the Nuclear Management and Resources Council (NUMARC) and Performance Demonstration Initiative (PDI) to inform NRC of PDI activities to implement the requirements of the American Society of Mechanical Engineers Code Section XI, Appendix VIII on performance demonstration qualification of inspectors.

DATES: November 6, 1992.

TIME: 10 a.m.

ADDRESSES: 11555 Rockville Pike, room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Z. Serpan, Jr., Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington DC 20555. Telephone: (301) 492-3835.

SUPPLEMENTARY INFORMATION: Following publication by the ASME Code of Mandatory Appendix VIII on "Performance Demonstration for Ultrasonic Examination Systems" in the 1989 Addenda, the U.S. nuclear industry formed an organization called Performance Demonstration Initiative (PDI) to implement the requirements of this appendix. Activities underway by PDI include definition and preparation of flawed test samples, plus development of the testing protocols. NRC is moving to incorporate Mandatory Appendix VIII into the Federal Regulations through incorporation into 10 CFR 50.55a; thus, NRC is very interested to learn of PDI's activities toward implementation of the appendix' requirements. This meeting is the second, annual information update meeting put forth by PDI for the NRC staff.

Dated at Rockville, Maryland, this 6th day of August, 1992.

For the Nuclear Regulatory Commission.

Charles Z. Serpan, Jr.,

Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research.

[FR Doc. 92-19452 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

Procedures for Providing Security Support for NRC Public Meetings/ Hearings

The Nuclear Regulatory Commission is revising its procedures for providing security support for all public NRC forums. This revision will provide a single set of procedures which will serve to ensure consistency and uniformity of application. These procedures will be used by NRC Headquarters and regional staff and are applicable to public hearings/meetings held at NRC Headquarters buildings, other NRC space in the Washington, D.C. area and/or regional locations, to include space leased for the occasion. This **Federal Register** notice supersedes the previous **Federal Register** notice regarding Security Support for NRC Meetings/ Hearings that was published on November 1, 1991.

In order to balance the orderly conduct of government business with the right of free speech, the following procedures regarding attendance at NRC public meetings and hearings have been established:

- Visitors (other than properly identified Congressional, press and government personnel) may be subject to personnel screening such as passing through metal detectors and visitors' briefcases, packages, etc., may be subject to inspection.
- Signs, banners, posters and displays will be prohibited from all NRC adjudicatory proceedings (Commission and Atomic Safety and Licensing Board Panel hearings) because they are disruptive to the conduct of the adjudicatory process. Signs, banners, posters and displays not larger than 18" square will be permitted at all other NRC proceedings, but cannot be waved, held over one's head or generally moved about while in the meeting room. Signs, banners, posters and displays larger than 18" square will not be permitted in the meeting room because they are disruptive both to the participants and to the audience. Additionally, signs, banners, posters and displays affixed to any sticks, poles or other similar devices will not be permitted in the meeting room.
- The presiding official will note any disruptive behavior on the record and warn the person to cease such behavior. If the person does not cease the behavior, the presiding official will call a brief recess to restore order or ask one of the security personnel on hand to remove the person.

FOR FURTHER INFORMATION CONTACT: David A. Dittmeier, Chief, Facilities Security Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-4124.

Dated at Rockville, Maryland, this 11th day of August 1992.

For the Nuclear Regulatory Commission.

Raymond J. Brady,

Director, Division of Security, Office of Administration.

[FR Doc. 92-19451 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted Service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on July 20, 1992 (57 FR 32034). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1 and June 30, 1992, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities

as of June 30, 1992, will also be published.

Schedule A

The following exception was established:

Smithsonian Institution

Positions at GS–15 and below at the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Positions like this comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative or program support positions. Effective June 11, 1992.

Schedule B

No Schedule B authorities were established or revoked during June.

Schedule C

Department of Agriculture

One Director, Press and Media Affairs, to the Manager, Federal Crop Insurance Corporation. Effective June 10, 1992.

One Associate to the Manager, Federal Crop Insurance Corporation. Effective June 12, 1992.

Agency for International Development

One Special Assistant to the Assistant Administrator, Bureau for Asia. Effective June 4, 1992.

Department of Commerce

One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism, U.S. Travel and Tourism Administration. Effective June 1, 1992.

One Confidential Assistant to the Deputy Assistant Secretary for Technology Policy. Effective June 4, 1992.

One Communications Officer to the Counsellor to the Secretary and Director of the Office of Public Affairs. Effective June 4, 1992.

One Special Assistant to the Director of Public Affairs, International Trade Administration. Effective June 7, 1992.

One Special Assistant for Legislative Issues to the Deputy Under Secretary, National Oceanic and Atmospheric Administration. Effective June 19, 1992.

Department of Defense

One Special Assistant for Public Policy to the Assistant Deputy Under Secretary of Defense for Policy Planning. Effective June 1, 1992.

One Secretary (Steno/Office Automation) to the Assistant Secretary of the Air Force (Acquisition). Effective June 10, 1992.

One Private Secretary to the General Counsel. Effective June 10, 1992.

One Staff Assistant to the Special Assistant to the Secretary of the Army/Executive Director of the Department of Defense 50th Anniversary of World War II Commemoration Committee. Effective June 10, 1992.

One Special Assistant to the Assistant Secretary of Defense for Public Affairs. Effective June 19, 1992.

One Law Clerk to a Judge, U.S. Court of Military Appeals. Effective June 30, 1992.

Department of Transportation

Two Special Assistants to the Secretary. Effective June 4, 1992.

Department of Education

Two Confidential Assistants to the Assistant Secretary for Postsecondary Education. Effective June 1, 1992.

One Special Assistant to the Assistant Secretary for Post-secondary Education. Effective June 1 1992.

One Special Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs. Effective June 1, 1992.

One Director, Regional Liaison Staff, to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective June 4, 1992.

One Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective June 4, 1992.

One Confidential Assistant to the Director of Communications/Counselor to the Secretary. Effective June 10, 1992.

One Confidential Assistant to the Assistant Secretary for Policy Planning, Office of Policy and Planning. Effective June 12, 1992.

One Special Assistant to the Assistant for Intergovernmental and Interagency Affairs. Effective June 12, 1992.

One Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective June 30, 1992.

One Special Assistant to the Deputy Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective June 30, 1992.

Department of Energy

One Special Assistant to the Secretary of Energy, Office of the Secretary. Effective June 12, 1992.

Equal Employment Opportunity Commission

One Special Assistant for Media to the Director, Office of Communications and Legislative Affairs, Office of the Chairman. Effective June 15, 1992.

Environmental Protection Agency

One Special Assistant to the Assistant Administrator, Office of Solid Waste and Emergency Response. Effective June 1, 1992.

One Program Advisor to the Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances. Effective June 22, 1992.

One Deputy to the Associate Administrator, Office of Regional Operations and State/Local Relations. Effective June 30, 1992.

Federal Labor Relations Authority

One Executive Assistant to the General Counsel. Effective June 22, 1992.

Department of Health and Human Services

One Confidential Assistant to the Executive Secretary, Office of the Secretary. Effective June 7, 1992.

One Speechwriter to the Deputy Assistant Secretary for Public Affairs (Media), Office of the Assistant Secretary for Public Affairs. Effective June 7, 1992.

One Director, Office of Public Liaison, to the Associate Administrator for Communications, Health Care Financing Administration. Effective June 30, 1992.

One Confidential Assistant to the Administrator, Health Care Financing Administration. Effective June 30, 1992.

Department of Housing and Urban Development

One Deputy Assistant Secretary for Single Family Housing to the Assistant Secretary for Housing. Effective June 1, 1992.

One Staff Assistant to the Deputy Assistant Secretary for Public Affairs. Effective June 10, 1992.

One Special Assistant to the Assistant Secretary for Policy Development and Research. Effective June 17, 1992.

One Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development. Effective June 19, 1992.

Department of Justice

One Special Assistant to the Director, Office of Policy and Communication. Effective June 1, 1992.

Department of Labor

One Special Assistant to the Assistant Secretary for Mine Safety and Health. Effective June 1, 1992.

National Endowment for the Arts

One Attorney-Advisor to the Chairman. Effective June 17, 1992.

Office of Management and Budget

One Confidential Assistant to the Associate Director for Legislative Reference and Administration. Effective June 17, 1992.

Office of National Drug Control Policy

One Confidential Assistant to the Associate Director for State and Local Affairs. Effective June 4, 1992.

One Special Assistant to the Director. Effective June 12, 1992.

President's Commission on White House Fellowships

One Associate to the Director. Effective June 10, 1992.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Finance, Investment and Procurement. Effective June 4, 1992.

Department of State

One Special Assistant to the Assistant Secretary, Congressional Relations, Bureau of Near Eastern Affairs. Effective June 12, 1992.

One Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer/Assistant Chief of Protocol, Office of the Chief of Protocol. Effective June 12, 1992.

United States Tax Court

One Trial Clerk to a Judge. Effective June 30, 1992.

Department of the Treasury

One Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison. Effective June 19, 1992.

One Staff Assistant (Correspondence Review) to the Executive Secretary. Effective June 19, 1992.

Department of Veterans Affairs

One Special Assistant to the Assistant Secretary for Human Resources and Administration. Effective June 19, 1992.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p.218.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–19362 Filed 8–13–92; 8:45 am]

BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Arapahoe Meadows, Arapahoe County, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Arapahoe Meadows, located near the City of Aurora, Arapahoe County, Colorado, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until November 12, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Fred Ambrogi, Resolution Trust Corporation, Northcorp Realty Advisors, Inc., 707 Broadway, NW.; suite 101, Albuquerque, NM 87102, (505) 246–9330, FAX (505) 246–9352.

SUPPLEMENTARY INFORMATION: The Arapahoe Meadows property is located in an unincorporated portion of Arapahoe County, southeast of Aurora, Colorado, at the southeast quadrant of the intersection of South Liverpool Street and East Arapahoe Road. The property has wetlands, historical and archaeological value. The site is contiguous with property managed by the East Arapahoe Improvement District for recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of approximately 414 acres of undeveloped land. The area is semirural with gently rolling hills. A band of wetlands is present along the Piney Creek drainage which crosses the site. The property contains a ranch complex with features of historic significance and pre-historic camp sites of archaeological value.

Property size: Approximately 414 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before November 12, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government
2. Agencies or entities of State or local government and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3))

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by November 12, 1992 to Mr. Fred Ambrogi at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Arapahoe Meadows, Federal Register Publication Date: August 14, 1992.

1. Entity name
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2))
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing)
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes
5. Authorized Representative (Name/Address/Telephone/Fax)

Dated: August 10, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–19377 Filed 8–13–92; 8:45 am]

BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-four presently existent Small Business Development Centers (SBDCs) on October 1, 1992. Currently there are 57 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Alabama, Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New York (Upstate), New York (Downstate), Ohio, Puerto Rico, Dallas, Houston, Lubbock, San Antonio, Vermont, Virgin Islands, West Virginia and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to

Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: November 12, 1992.

ADDRESSES: Comments should be addressed to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Programs, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Monika Edwards Harrison, Associate Administrator for SBDC Programs, (202) 205–6766.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accord with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-four presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties.

SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of P.L. 96–302, as amended by P.L. 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. to the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and

SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hours week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: July 29, 1992.

Patricia Saiki,

Administrator.

Addresses of Relevant SBDC State Directors

Mr. John Sandefur, State Director, University of Alabama, 1717 11th Ave. South, Suite 419, Birmingham, AL 35294, (205) 934–7260

Mr. John P. O'Connor, State Director, University of Connecticut, Box U–41, Room 422, Storrs, CT 06269–2041 (203) 486–4135

Mr. Ronald Manning, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292–6351

Dr. John Baker, State Director, Northeast Louisiana University, College of Business Admin. 700 University Avenue, Monroe, LA 71209, (318) 342–5510

Mr. John Ciccarelli, State Director, University of Massachusetts, School of Management, Amherst, MA 01003, (413) 545–6301

Mr. Raleigh Byars, State Director, University of Mississippi, Old Chemistry Building, University, MS 38677, (601) 232–5001

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398

Ms. Jan Fredericks, State Director, University of Alaska/Anchorage, 430 West 7th Avenue, Suite 115, Anchorage, AK 99501, (907) 274–7232

Ms. Linda Fayerweather, State Director, University of Delaware, Suite 005—Purnell Hall, Newark, DE 19711, (302) 831–2747

Ms. Janet Holloway, State Director, University of Kentucky, 225 Business & Economics Bldg., Lexington, KY 405506–0034, (606) 257–7668

Mr. Woodrow McCutchen, State Director, Department of Economic and Employment Development, 217 East Redwood St., 10th Floor, Baltimore, MD 21202, (301) 333–6996

Dr. Norman Schlafmann, State Director, Wayne State University 2727 Second Avenue, Detroit, MI 48201, (313) 577–4848

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (314) 882–0344

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466-2711

Mr. Jose Romaguera, Director, University of Puerto Rico, Box 5253—College Station, Mayaguez, PR 00708, (809) 834–3590

Dr. Elizabeth Gatewood, Region Director, University of Houston, 601 Jefferson, Suite 2330, Houston, TX 77002, (713) 752–8444

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, San Antonio, TX 78249, (512) 224–0791

Dr. Solomon Kabuka, Jr., Director, Univ. of the Virgin Islands, Grand Hotel Building, Annex B, P.O. Box 1087, St. Thomas, US V. Islands 00804, (809) 776–3206

Mr. Jim Glover, State Director, Casper Community College, 111 West Second Street, Suite 416, Casper, WY 82601, (307) 235–4825

Ms. Marty Jones, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75215, (214) 565–5833

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973

Mr. Norris Elliott, State Director, University of Vermont, One Blair Park, Suite 13, Burlington, VT 05495–9404, (802) 878–0181

Ms. Eloise Jack, State Director, Governor's Office of Community and Industrial Development, 1115 Virginia Street, East, Charleston, WV 25310, (304) 558–2960

[FR Doc. 92–19067 Filed 8–13–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 7, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48284.

Date filed: August 4, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/C 0209 dated May 22, 1992. Europe-South Asian Subcontinent Reso 002.

Proposed Effective Date: October 1, 1992.

Docket Number: 48285.
Date filed: August 4, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1430 dated June 16, 1992. Mid Atlantic-Europe Resos; R-1 To R-37.
Proposed Effective Date: October 1, 1992.

Docket Number: 48286.
Date filed: August 6, 1992.
Parties: Members of the International Air Transport Association.
Subject: Telex TW768, Comp Mail Vote 586-Reso 024J, Telex TW790, Comp Mail Vote 586-Voting Results.
Proposed Effective Date: January 1, 1992.

Docket Number: 48287.
Date filed: August 6, 1992.
Parties: Members of the International Air Transport Association.
Subject: MV/PSC/085 dated June 24, 1992, Mail Vote S059 Resos 740 (R-1) and 743a (r-2).
Proposed Effective Date: September 1, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-19385 Filed 8-13-92; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 7, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.
Docket Number: 45723.
Date filed: August 5, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 2, 1992.
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for Amendment of its foreign air carrier permit, to permit it to engage in the scheduled air transportation of persons, property and mail on the scheduled routes: (1) Mexico City (Benito Juarez) (MEX)/Toluca (Morelos) (TLC), on the one hand, and Albuquerque, N.W. (ABQ), on the other hand; (2) Zihuantanejo/Ixtapa (ZIH), Mexico, on the one hand, and Albuquerque, NM (ABQ, on the other hand; (3) Chihuahua (CUU), Mexico on the one hand, and Albuquerque, NM (ABQ) on the other hand; and (4) Ciudad Juarez (CJS) Mexico, on the one hand, and Albuquerque, NM (ABQ) on the other hand.

Phyliis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-19386 Filed 8-13-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee Air Carrier/General Aviation Maintenance Subcommittee.

DATES: The meeting will be held on September 28, 1992, at 1 p.m. Arrange for oral presentations by September 16, 1992.

ADDRESSES: The meeting will be held at the Pittsburgh Hilton and Towers, Gateway Center, Pittsburgh, PA, at 1 p.m. .

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Renaud, Meeting Coordinator, Aircraft Maintenance Division, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-7461.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier/General Aviation Maintenance Subcommittee to be held on September 28, 1992. The agenda for the meeting will include reports from the working groups dealing with establishment of current standard weights for passengers and baggage, development of a notice proposed rulemaking (NPRM) for part 65 of the Federal Aviation Regulations (FAR), development of an NPRM for reporting requirements of §§ 121.703 and 121.705 of the FAR, development of an advisory circular for Special Federal Aviation Regulation (SFAR) 36, and development of an NPRM and advisory circular for maintenance recordkeeping and retention of records.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before September 16, 1992, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting coordinator. Arrangements may be made by contacting the meeting coordinator listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on August 10, 1992.

Frederick J. Leonelli,
Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.
[FR Doc. 92-19384 Filed 8-13-92; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Mercedes-Benz

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Mercedes-Benz of North America, Inc. (Mercedes-Benz) for exemption from the parts making requirements of the vehicle theft prevention standard for a high theft car line (whose nameplate is confidential), pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.*

DATES: The exemption granted by this notice is effective beginning with the 1994 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: On December 19, 1991, the agency received a letter from Mercedes-Benz of North America, Inc. (Mercedes-Benz) requesting an exemption from the theft prevention standard for an existing car line. The letter was submitted pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard. Mercedes-Benz requested an exemption from parts marking based on the installation of a theft deterrent system*

as standard equipment for the car line that is the subject of this notice.

The information submitted by Mercedes-Benz constitutes a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated December 20, 1991 to Mercedes-Benz, the agency granted the petitioner's extensive requests for confidential treatment of the information in its petition. Confidential treatment was granted for the nameplate of the car line.

In its petition, Mercedes-Benz provided a description of the identity, design, and location of the components of the antitheft device proposed for the car line that is the subject of this notice, including diagrams of the components and their location in the vehicle. Mercedes-Benz stated that the proposed antitheft system incorporates an alarm function, engine starter interrupt function, and to ensure reliability, an improved fault diagnosis feature.

Mercedes-Benz stated that the proposed antitheft system is automatically activated by the normal locking of the vehicle door. In order to arm the system, the key must be removed from the ignition switch; all of the doors, trunk lid, hood lid, and storage compartments must be closed; and the driver's or front passenger's door must be locked with the ignition key or a remote unit. The agency does not consider the remote unit to be an integral feature of the antitheft system but as an added feature that complements the passive system. Locking any door ensures that all doors, the hood, and trunk are locked. The system monitors the vehicle's doors, hood, trunk, storage compartments, ignition switch, radio, and brake pedal.

If the system is armed and unauthorized entry is attempted, the antitheft system will be triggered, setting off audible and visual signals to attract attention. Additionally, the antitheft system will activate the starter-interrupt relay, preventing the starting of the engine from the ignition switch. Mercedes-Benz stated that to prevent defeat of the antitheft system, all system components are in inaccessible locations. Mercedes-Benz described further measures to prevent unauthorized operation of its new car line.

Mercedes-Benz addressed the reliability and durability of its proposed antitheft system by describing the tests that were conducted on the system. This discussion included a description of a built-in fault diagnostic feature in the system.

In discussing why it believes the antitheft system will be effective in reducing and deterring motor vehicle theft, Mercedes-Benz stated that an existing Mercedes-Benz car line has an antitheft system similar to that proposed for the car line that is the subject of this notice. Mercedes-Benz stated that the theft rate for the existing car line decreased for the first year that the antitheft system was included as standard equipment, and that its theft rates have remained below the MY 1983/84 median theft rate of 3.2712 since then. Mercedes-Benz asserted that these theft data alone indicate the effectiveness of the antitheft system, and that the system that is the subject of the petition will be even more effective because of certain improvements and upgrades in the antitheft system.

Mercedes-Benz also compared its proposed antitheft system with similar antitheft systems, manufactured by other manufacturers, that have been previously granted exemptions from this agency. Mercedes-Benz stated that the theft rates of these comparable lines decreased when the antitheft systems was made standard equipment, and have remained below the 3.2712 median. The agency concurs with Mercedes-Benz that these antitheft systems manufactured by other manufacturers are comparable to the system proposed by Mercedes-Benz for its car line.

NHTSA believes that there is substantial evidence indicating that the antitheft systems to be installed as standard equipment in the Mercedes-Benz car line that is the subject of this notice, will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information Mercedes-Benz submitted with its petition and on other available information. The agency believes that the device will provide all of the types of performance listed in § 543.6(a)(3): Promoting activation, preventing defeat or circumventing of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants, and ensuring the reliability and durability of the device.

As required by section 605)(b) of the statute and 49 CFR § 543.6(a)(4), the agency also finds that Mercedes-Benz has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Mercedes-Benz provided on its device. This information included a description of reliability and functional tests conducted by Mercedes-Benz for the antitheft systems and its components.

For the foregoing reasons, the agency hereby exempts the Mercedes-Benz car line that is the subject of this notice, in whole from the requirements of 49 CFR part 541.

If Mercedes-Benz decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, that car line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Mercedes-Benz wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis* then it should consult the agency before preparing and submitting a petition to modify.

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

Issued on: August 10, 1992.

Marion C. Blakey,

Acting Administrator.

[FR Doc. 92–19378 Filed 8–13–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 92-78]

Determination That Merchandise Imported From the People's Republic of China, Manufactured by Xuzhou Forging and Pressing Machine Works, Is Being Produced by Convict, Forced or Indentured Labor

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Determination that Merchandise is Subject to 19 U.S.C. 1307.

SUMMARY: This document advises that the Commissioner of Customs, with the approval of the Secretary of the Treasury, has determined that certain machine presses/mechanical stamping presses, which are being, or are likely to be imported into the United States from the People's Republic of China (PRC), are being manufactured with the use of convict labor and/or forced labor and/or indentured labor by the Xuzhou Forging and Pressing Machine Works, Jiangsu Branch, Xuzhou, Jiangsu Province, PRC. The Commissioner of Customs, pursuant to 19 CFR 12.42(f) has determined, on the basis of a Customs investigation, that such merchandise is being, or is likely to be imported into the United States in violation of section 307 of the Tariff Act of 1930, as amended. As such importations of the aforementioned machine presses/mechanical stamping presses shall be considered and treated as prohibited by section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), unless, pursuant to 19 CFR 12.42(g), 12.43, and 12.44, the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified herein.

DATES: This determination shall take effect on or before August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Maria E. Herrera, Acting Director, Fraud Investigations Division, Office of Enforcement, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 566-6188.

SUPPLEMENTARY INFORMATION:

Background

Section 307, Tariff Act of 1930, as amended, (19 U.S.C. 1307), provides in pertinent part:

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

Forced labor is defined to mean:

All work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. See, 19 U.S.C. 1307.

Pursuant to section 307, the Secretary of the Treasury promulgated implementing regulations found at 19 CFR 12.42, *et seq.* These regulations set forth the procedure for the Commissioner of Customs to make a finding that an article is being, or is likely to be imported into the United States which is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of 19 U.S.C. 1307.

Paragraph (f) of § 12.42, Customs Regulations (19 CFR 12.42(f)), provides that if the Commissioner of Customs finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported, [s]he will, with the approval of the Secretary of the Treasury, publish a finding to that effect in a weekly issue of the Customs Bulletin and in the **Federal Register**.

Finding

Pursuant to § 12.42(f), Customs Regulations (19 CFR 12.42(f)), it is hereby determined that certain articles of the People's Republic of China are being, or are likely to be, imported into the United States, which are being produced, whether by mining, manufacture, or other means, with the use of convict, forced, or indentured labor.

Accordingly, based upon this finding, Customs officers shall withhold release of any of these articles from the People's Republic of China. Such articles may be exported only.

Articles

Item Number from the Harmonized Tariff Schedule (19 U.S.C. 1202)

Machine Presses/Mechanical Stamping Presses 8462.10.00 (manufactured by Xuzhou Forging and Pressing Machine Works).

Carol Hallett,

Commissioner of Customs.

Approved: July 22, 1992.

Peter R. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-19392 Filed 8-13-92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "*Convivencia:* Jews, Muslims and Christians in Medieval Spain," formerly titled "*Convivencia:* Art and Society in Medieval Iberia" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Jewish Museum's temporary exhibition space at the New York Historical Society from on or about September 20, 1992 to on or about December 20, 1992; thence to the Meadows Museum of Southern Methodist University, Dallas, Texas, from on or about January 28, 1993 to on or about April 11, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 7, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-19361 Filed 8-13-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Magritte" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 12, 1992, to on or about November 22, 1992; The Menil Collection, Houston, Texas, from on or about December 15, 1992 to on or about February 21, 1993; and The Art Institute of Chicago from on or about March 16, 1993 to on or about May 30, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 7, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–19410 Filed 8–13–92; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m. August 19, 1992.

PLACE: Room 9306, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20573-0001.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 92-33—*Marine Terminal Facilities Agreements—Exemption*—Consideration of Comments.
2. Docket No. 92-22—*Tariff Filing By Non-Vessel-Operating Common Carriers*—Consideration of Comments.
3. Docket No. 92-19—*Revision of Financial Responsibility Requirements for Non-Performance of Transportation*—Consideration of Comments.
4. Docket No. 92-29—*Free Time and Demurrage Charges on Import Property at the Port of New York: Truck Detention at the Port of New York*—Consideration of Comments.
5. Docket No. 92-36—*Reduction of Notice Requirements for Tariff Increases in the Domestic Offshore Trade—Exemption Under Section 35 of the Shipping Act, 1916*—Consideration of Comments.
6. Docket No. 91-51—*Financial Reports of Common Carriers by Water in the Domestic Offshore Trades*—Consideration of Comments.
7. Docket No. 92-20—*Service Contracts in Foreign-to-Foreign Trades*—Consideration of Comments.
8. Docket No. 92-21—*Amendments to Service Contracts*—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19525 Filed 8-12-92; 1:11 pm]

BILLING CODE 6730-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 9:00 a.m., Tuesday, August 25, 1992.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Comments submitted pertaining to the Commission's proposed revision of certain of its Rules of Procedure published on May 12, 1992 at 57 FR 20220-20234.

CONTACT PERSON FOR MORE INFORMATION: Earl R. Ohman, Jr., (202) 634-4015.

Dated: August 12, 1992.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 92-19538 Filed 8-12-92; 2:32 pm]

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Corrections

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8413]

RIN 1545-AG95

Reduction of Tax Overpayments by Amount of Past-Due, Legally Enforceable Debt Owed to a Federal Agency

Correction

In rule document 92-8569 beginning on page 13035 in the issue of Wednesday, April 15, 1992, make the following corrections:

1. On page 13036:

a. In the second column, in the first full paragraph, in the second line, "to" should read "of" and "of" should read "to".

b. In the third column, in the second full paragraph, in the first line, "301.6401-6T(a)(2)" should read "301.6402-6T(a)(2)".

c. In the same column, after the third full paragraph, the sentence beginning "Therefore" should be included as part of the previous paragraph.

d. In the same column, in the last paragraph, in the first line, remove "do not".

2. On page 13037, in the third column, in the last paragraph, in the seventh line, "Once" should read "One".

3. On page 13038:

a. In the first column, in the third paragraph, in the first line, "commentator" was misspelled.

b. In the same column, in the same paragraph, in the eighth line, "been" should read "to be".

c. In the same column, in the last line, "illegally" should read "legally".

§ 301.6402-6 [Corrected]

d. In the third column, in § 301.6402-6(a)(2)(ii), in the last line, "Security" was misspelled.

e. In the same column, in § 301.6402-6(b)(1)(i), "Tax" should read "tax".

4. On page 13039, in the first column, in § 301.6402-6(b)(2), in the fourth line, "service" should read "Service".

5. On page 13040, in the first column, in § 301.6402-6(j), in the fourth line, "Financial" was misspelled.

6. On the same page, in the second column, in § 301.6402-6(m), in the fourth line, "connection" was misspelled; and in the sixth line, "code" should read "Code".

BILLING CODE 1505-01-D

federal register

Friday
August 14, 1992

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.

Intermediate Bulk Containers for Hazardous Materials

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 178, and 180

[Docket No. HM-181E; Notice No. 92-7]

RIN 2137-AC23

Intermediate Bulk Containers for Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend the Hazardous Materials Regulations (HMR) by adopting requirements for the construction, maintenance and use of intermediate bulk containers (IBCs) for the transportation of hazardous materials. This proposal is based on IBC specifications and performance standards contained in the United Nations Recommendation on the Transport of Dangerous Goods (UN Recommendations) and the IBC/commodity assignments set forth in the International Maritime Organization (IMO) International Maritime Dangerous Goods (IMDG) Code. The purpose of this proposal is to promote flexibility and technological innovation in the development of IBC design types, eliminate existing DOT exemptions applying to polyethylene, rigid, and flexible IBCs, provide a safer transportation system, and remove a dual domestic and international regulatory system. The adoption of these standards would enhance technological innovation particularly in the development of polyethylene and composite IBCs, resulting in higher integrity packaging.

DATES: Comments must be received by September 14, 1992.

ADDRESSES: Comments to this NPRM should be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the Docket (HM-181E) and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: (202) 366-5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Gramer, Office of Hazardous Materials Technology, (202) 366-4545, or John Potter, Office of Hazardous Materials Standards, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001, (202) 366-4488.

SUPPLEMENTARY INFORMATION: On January 28, 1992, President Bush announced a 90-day moratorium and review of regulations to identify unnecessary and burdensome government regulations. In response to the President's announcement, DOT published on February 7, 1992, Docket RR-1, Notice 92-1 (57 FR 4744), soliciting public comments on the DOT's regulatory programs. Comments addressing the HMR were requested to be submitted to RSPA's Docket Unit. In response to that notice, RSPA received over 40 comments. Many comments addressed notices of proposed rulemaking that have not been finalized. Those comments will be given full consideration along with all other comments prior to taking final action under those dockets. Comments addressing certain other issues are under review for consideration in future rulemaking actions. RSPA also conducted a review of each of its regulations and identified the detailed specifications in Subpart H of Part 178 as an area in which the adoption of performance standards would decrease packaging costs and improve packaging efficiency. Therefore, RSPA is proposing to provide performance standards for intermediate bulk containers.

Intermediate bulk containers (IBCs) usually are reusable packagings designed to facilitate the intermodal transferring of hazardous materials. With capacities averaging between 300 and 400 gallons (a 330-gallon IBC is equal in capacity to six 55-gallon drums), IBCs fill a niche in the packaging spectrum between the 55-gallon drum and a 5,000- gallon cargo tank. Most rigid and flexible IBC types are equipped with special handling (e.g., grips or straps), stabilizing (e.g., steel cages) and load/off-load (e.g., bottom outlets) accoutrements. Although amendments to the HMR under Docket HM-181 were very comprehensive, they did not address the issue of IBCs. Commenters to the docket stated that the rulemaking would be incomplete without addressing IBCs.

IBC prototypes were first regulated in the early 1970's when the DOT adopted standards for the construction and use of metal portable tanks under DOT specifications 52, 53, 56, and 57. Although DOT specifications 52 and 53 can no longer be manufactured, all four are currently authorized packagings for hazardous materials. Since the 1970's, the IBC industry has rapidly diversified to meet new intermodal bulk distributional requirements. As a result of these changes, RSPA has granted exemptions, authorizing a broad range of non-DOT Specification IBC design types. In 1986, the UN added recommendations for IBC specifications and performance test requirements in the fourth revised edition of the UN Recommendations. In 1989, IMO became the first agency to authorize IBCs for hazardous materials transportation.

On December 24, 1990, RSPA received a petition for rulemaking from the Rigid Intermediate Bulk Container Association (RIBCA) requesting adoption of requirements for the construction, maintenance, and use of IBCs in accordance with the UN Recommendations. In addition, RIBCA requested that RSPA adopt commodity assignments based on the IMDG Code but, if possible, without the addition of another commodity table.

This proposal would extend the performance-oriented standards and principles advanced in Docket HM-181 and respond to the petition for rulemaking from RIBCA. These principles and standards include promotion of flexibility and technological innovation in the development of IBC design types, elimination of existing DOT exemptions applying to polyethylene, rigid, and flexible IBCs, and removal of a dual domestic and international regulatory system.

Elimination of exemption requirements would enhance technological innovation particularly in the development of polyethylene and composite IBCs, resulting in higher integrity packaging and a safer transportation system. The removal of these exemptions would also free manufacturers from the cost and administrative burden of filing for exemption renewals and from maintaining a continuing history of the shipping experiences of each design type. The following 111 exemptions authorizing IBCs are potentially affected by the adoption the UN performance standards for IBCs:

5520	8136	8629
6743	8146	8631
7259	8225	8653
7543	8303	8681
7622	8332	8692
7625	8351	8779
7869	8444	8784
8087	8570	8798
8094	8588	8839

8861	9319	9846
8883	9319	9889
8884	9340	9917
8910	9367	9920
8921	9374	9923
8937	9396	9938
8942	9400	9944
8982	9440	9983
9015	9498	9996
9042	9503	10021
9046	9519	10090
9052	9531	10104
9062	9533	10135
9078	9534	10273
9089	9592	10298
9092	9628	10362
9110	9637	10468
9116	9645	10476
9117	9658	10513
9116	9690	10537
9133	9692	10547
9140	9701	10562
9144	9713	10563
9150	9783	10570
9201	9789	10598
9213	9804	10633
9272	9805	10687
9289	9806	

The construction and design testing requirements for IBCs contained in this proposal are based on the standards specified in Chapter 16 of the UN Recommendations. These standards include definitions, specifications, performance test requirements, and inspection and periodic testing of metallic, rigid plastic, composite, fiberboard, wooden, and flexible IBCs.

In lieu of providing specific IBC/commodity assignments, RSPA proposes to establish generic IBC/commodity assignments in §§ 173.240 through 173.243. Assignments would be based on the lists of liquid and solid ("Substances Suitable for Transport in Intermediate Bulk Containers") contained in the IMDG Code. However, RSPA proposes to authorize the use of IBCs for some materials that are not allowed by the IMDG Code to be transported in any IBC or in a specific IBC type.

RSPA acknowledges that generic IBC/commodity assignments may be construed as being inconsistent with the table of commodity-specific assignments in the IMDG Code. By not proposing a separate table incorporating each specific IBC/commodity assignment, RSPA would maintain its objectives in HM–181 to provide simplified, generic commodity/packaging assignments throughout the HMR. RSPA believes generic IBC/commodity assignments would avoid the confusion of cross-referencing between entries in the § 172.101 Table and separately maintained table of commodity-specific IBC assignments, and the expense of revising such a table each time a new commodity is added. To allay concerns of shippers who may wish for complete alignment of the HMR with IMDG Code IBC specifications and commodity assignments, RSPA proposes to revise § 171.12(b) to permit hazardous materials to be offered for transportation in IBCs specified in the IMDG Code when vessel transportation is involved.

RSPA also proposes to prohibit the manufacture of DOT specification 56 and 57 portable tanks after October 1, 1996. DOT specification 56 and 57 portable tanks are by definition IBCs, and RSPA sees no need to maintain two standards for metallic IBCs. However, RSPA proposes to allow continued domestic use of DOT 56 and 57 portable tanks for as long as they meet the inspection and retest provisions contained in § 173.32.

Section-by-Section Review

Section 171.7. The puncture resistance standard for fiberboard packagings (ISO 3036–1975) and quality assurance standards under ISO 9000 would be added to the Table of material incorporated by reference.

Section 171.8. A general definition of "intermediate bulk container" is proposed in this section. It includes the 3,000 liter (L) upper IBC capacity limit recommended by the UN and adopted by the IMO in the IMDG Code, and a 450 L lower capacity limit. Although a 250 L lower capacity limit for IBCs is established in paragraph 26.1.2.1 of the IMDG Code, RSPA proposes to adopt a 450 L minimum to be consistent with the definition of non-bulk packaging in § 171.8. The UN Recommendations give some support to a 450 L lower limit in paragraph 16.1.2.1, defining IBCs generally as "rigid, semirigid or flexible portable packaging, *other than those* specified in Chapter 9 * * *" And in paragraph 9.1.2, the UN states that the Recommendations "do not cover" [non-bulk] packaging "with a capacity exceeding 450 L." RSPA's proposal to adopt a 450 L lower limit is also consistent with the understanding that 99% of all IBCs produced in the U.S. exist within the 450–3000 L range.

Section 171.12. This section would be revised to authorize the use of IBCs in accordance with the IMDG Code for those shipments involving transportation by vessel.

Section 172.101. The Hazardous Materials Table would be revised to include IBC/commodity assignments.

Section 172.102. Five special provisions (B-notes) would be added in paragraph (c)(3) and referenced in column 5 of the Hazardous Materials Table prohibiting particular materials in certain or all IBCs and specifying special conditions of hazardous materials transport in IBCs. For example, a material listed in the Table with B104 referenced in column 5 would be transported in an IBC provided with a device or vent to allow venting during transport and stowed with the vent uppermost.

Section 172.514. Paragraph (c)(4) would be added to require all IBCs to be labeled or placarded on two opposite sides.

Section 173.24. A new paragraph (j) would be added specifying that when packagings are used for the transportation of liquids with a flash-point of 60.5°C (141°F) (closed cup) or lower or powders liable to dust explosion, measures must be taken to prevent a dangerous electrostatic discharge.

Section 173.32. A grandfathering provision for DOT Specification 56 and 57 portable tanks is proposed in paragraph (d). Although DOT Specification 56 and 57 portable tanks would not be allowed to be manufactured after October 1, 1996, the HMR would permit them to remain in hazardous materials service for the commodities they are currently authorized to contain.

Section 173.35. Operational requirements for the use of IBCs would be added. This new section would address the IBC filling limits, vapor pressure limits for rigid plastic or composite IBCs intended to contain liquids, and the transport of empty IBCs. Authorized use of rigid plastic IBCs and composite IBCs with plastic inner receptacles would be limited to five years. If an IBC owner can show that their IBC still provides an effective level of safety, longer periods of use may be authorized by the Associate Administrator for Hazardous Materials Safety. Before being filled and offered for transportation, every IBC and its service equipment would be visually inspected to ensure that it is free from corrosion, contamination, cracks, or other damage which would render the IBC unsafe for transportation. RSPA proposes that no rigid plastic or composite IBCs with repaired plastic components, or fiberboard, wooden or flexible IBCs, can be reused. The requirements in this section would not apply to DOT specification 56 and 57 portable tanks manufactured before October 1, 1996.

Section 173.225. This section would be revised to include organic peroxide/IBC assignments and to prescribe special conditions for certain organic peroxides transported in IBCs.

Section 173.240–243. These generic bulk packaging sections would be amended to authorize the use of IBCs for certain materials. For use in transporting

particular commodities, an IBC would be required to withstand the applicable test criteria specified in Subpart O of part 178 at the Packing Group level specified in Column 5 of the Hazardous Materials Table.

Section 178.700. The general purpose and scope of this notice pertaining to IBC standards are contained in this section and general definitions associated with IBC design types specified in §§ 178.705–710 are proposed. For example, an IBC *body* means the receptacle proper, including openings and their closures. IBC *service equipment* means filling and discharge, pressure relief, safety, heating and heat-insulating devices, and measuring instruments. IBC *structural equipment* means the reinforcing, fastening, handling, protective, or stabilizing members of the body (i.e., metal cages).

Section 178.702. IBC code designations for metallic, rigid plastic, composite, fiberboard, wooden, and flexible IBCs are proposed.

Section 178.703. Requirements for the certification marking of IBCs are proposed. The IBC certification mark is comprised of the following elements: code numbers designating IBC design type, Packing Group designation, the country authorizing allocation of the mark, name, address or symbol of the manufacturer, or the approval agency certifying compliance with Subparts N and O of part 178; and the stacking test load in kilograms (kg), the maximum permissible gross mass (for flexible IBCs, the maximum permissible load in kg). Three examples of IBC certification marking are given.

Section 178.704. General requirements applicable to manufacturers before IBCs are used in hazardous materials transport are proposed. For example, paragraph (e) would require that all IBC service equipment be positioned or protected to minimize potential loss of contents resulting from damage during IBC handling and transportation.

Sections 178.704–710. Specific IBC standards for metallic, rigid plastic, composite IBCs with plastic inner receptacles, fiberboard, wooden, and flexible IBCs are proposed. For metallic IBCs, authorized steel and aluminum construction materials would be set forth in § 178.705(c)(1). Body wall thicknesses are proposed for metallic IBCs in § 178.705(c)(1)(iv)(A). Standards for inner receptacles of composite IBCs are proposed in § 178.707(c)(3), and composite outer packagings in § 178.707(c)(4). Standards for fiberboard IBCs in § 178.708 would be similar to those for nonbulk fiberboard boxes in § 178.516. However, fiberboard IBCs would also conform to the ISO international minimum puncture resistance standard (ISO 3036–1975). Rigid and flexible IBC design types include:

(1) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(2) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (21A, 21B, 21N);

(3) Metallic IBCs (31A, 31B, 31N);

(4) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and for solids which are loaded or discharged by gravity (11H1);

(5) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(6) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(7) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(8) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(9) Freestanding rigid plastic IBCs (31H2);

(10) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(11) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(12) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(13) Composite IBCs with flexible plastic inner receptacles loaded or discharged under pressure (21HZ2);

(14) Composite IBCs with rigid plastic inner receptacles (31HZ1);

(15) Composite IBCs with flexible inner receptacles (31HZ2);

(16) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(17) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(18) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(19) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(20) Woven plastic IBCs without coating or liner (13H1);

(21) Coated woven plastic IBCs (13H2);

(22) Woven plastic IBCs with liner (13H3);

(23) Coated woven plastic IBCs with liner (13H4);

(24) Plastic film IBCs (13H5);

(25) Textile IBCs without coating or liner (13L1);

(26) Coated textile IBCs (13L2);

(27) Textile IBCs with liner (13L3);

(28) Coated textile IBCs with liner (13L4);

(29) Paper multiwall IBCs for solids (13M1); and

(30) Paper multiwall water resistant IBCs (13M2).

(Note: For composite IBCs, the letter "Z" is replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 31HA1 is a composite IBC with a metal outer packaging.)

Section 178.801. General IBC testing, inspection, and record-keeping requirements are proposed in this section. RSPA would require IBC design qualification testing conducted at the start of production of each new or different IBC design type, production testing and inspection performed on each newly manufactured IBC, and periodic retest and inspection of each IBC conducted at least every 2.5 years. RSPA also proposes to add periodic IBC design type requalification test requirements. Extending the principle established for non-bulk packagings under Docket HM–181, and in conformance with Section 16.1.4.1.1 of the UN Recommendations, RSPA believes that periodic requalification of IBC design types would provide essential quality control throughout an IBC production run, ensuring that newly manufactured IBCs maintain the integrity of original, successfully tested design types. All IBC design types would be requalified at least once every 12 months. Composite IBC design types now requalified every four months under DOT exemption would be requalified every year under this proposal. Selective testing of metallic, rigid plastic, and composite IBCs which include variations of up to a 25 percent decrease in the outer dimensions of tested IBC design types would be permitted without further testing.

RSPA proposes to require IBC manufacturers to keep records for the qualification of each IBC design type and for each periodic design requalification. Records would be maintained at each location where an IBC is manufactured and at each location where IBC design qualification and periodic design requalification testing is performed. Records must be maintained for as long as IBCs are manufactured in accordance with each qualified design type and for at least 2.5 years thereafter. Manufacturer records would include specific IBC types tested, dates of tests, location of tests, results of

tests required in this part (including drop heights, hydrostatic pressures, tear propagation length, etc.), name of the person conducting the test, and name of the person responsible for testing. IBC owners would keep records of periodic retests and inspections.

Section 178.802. Requirements for the preparation of fiberboard, rigid plastic, and composite IBCs for testing are proposed. Fiberboard IBCs would be conditioned under the same temperature and relative humidity conditions as proposed for non-bulk fiberboard packagings in § 178.602(d). Although the UN recommends that manufacturers verify the compatibility of plastic construction materials with ladings intended to be contained in rigid plastic and composite IBCs, RSPA believes this is a shipper's responsibility. Therefore, RSPA proposes that the shipper compatibility requirement in § 173.24(e) be extended to IBCs.

Sections 178.803–808. Testing and certification requirements for metallic, plastic rigid, composite, fiberboard, wooden, and flexible IBC design types are proposed. Charts displaying qualification tests (specified in §§ 178.820–842) required for each IBC design type, indicated by IBC design type codes, are included.

Section 178.810. A drop test similar in many respects to requirements for non-bulk packagings in § 178.603 is proposed for all IBC design types. IBCs intended to transport liquids must be filled to at least 98% of their capacity, and 95% for solids, in preparation for the drop test. IBCs with plastic outer bodies or with plastic components would be drop tested when samples and contents have been reduced to −18 °C(0 °F) Samples of all IBC design types would be dropped onto a non-resilient, smooth, flat surface. The point of impact would be the most vulnerable part of the base of the IBC being tested. IBCs intended to carry liquids would be tested to a certain packing group level depending on the hazard of the material.

Section 178.811. A bottom lift test is proposed for IBCs designed to be lifted from the base.

Section 178.812. A top lift test is proposed for all metallic, rigid plastic, composite, and flexible IBC design types designed to be lifted from the top.

Section 178.813. A leakproofness test is proposed for the design qualification of metallic, rigid plastic, and composite IBC design types, and production units before first use, if they are intended to contain liquids or if intended for solids discharged by pressure. This test is additionally required for IBC design types and production units intended to contain solids that are loaded or discharged under pressure. The test would be performed by applying air at a gauge pressure of not less than 20 kPa (2.9 psig) for 10 minutes using suitable methods such as pressure differential or water immersion. Other methods used in accordance with Appendix B of this part may be used for rigid plastic or composite IBCs.

Section 178.814. A hydrostatic pressure design qualification test is proposed for all metallic IBC design types and all rigid plastic and composite IBC design types intended to contain liquids or intended to contain solids loaded or discharged under pressure. The test would be performed for 10 minutes at gauge pressures specified for three metallic IBC design types intended to contain liquids and four rigid plastic and composite IBC design types.

Section 178.815. RSPA proposes a stacking test for the qualification of all IBC design types designed to be stacked. Metallic IBCs would be stack tested for at least five minutes. Fiberboard, wooden, and rigid plastic and composite IBC design types fitted with structural equipment would be tested for 24 hours. Stand-alone rigid plastic and composite design types would be tested for 28 hours at 40°C (72° F). For all IBC design types, the load placed on the IBC would be 1.8 times the combined maximum permissible gross mass of the number of similar IBCs that may be stacked on top during transport.

Section 178.816. A topple test is proposed for the qualification of all flexible IBC design types at the Packing Group levels prescribed for the drop test in § 178.820.

Section 178.817. A righting test is proposed for the qualification of all flexible IBC design types designed to be lifted from the top or side.

Section 178.818. A tear test is proposed for the qualification of all flexible IBC design types.

Section 178.819. A vibration test is proposed for the qualification of all IBC design types.

Section 180.352. Requirements for initial and periodic retest and inspection of IBCs are proposed. Initially after production and every 2.5 years thereafter, metallic, rigid plastic, and composite IBCs intended for liquids or for solids loaded or discharged by pressure would be required to withstand the 20 kPa (2.9 psig) leakproofness test prescribed in § 178.828. For these design types, external inspections must be performed after production and each 2.5 years thereafter to ensure that each IBC is properly marked, is free from damage that may reduce its structural integrity during transportation, and that IBC service equipment functions properly. Internal inspections would be required to be performed initially after production and every five years thereafter. Metallic, plastic, and composite IBCs would be inspected for cracks, warpage, and corrosion. Metallic IBCs would be inspected for corrosion of construction material below required minimum thicknesses. An IBC found with such defects would have to be removed from hazardous materials service. Flexible, fiberboard, or wooden IBCs would be inspected to ensure they are properly marked and that they meet required construction and design specifications. For example, each flexible IBC would be inspected to ensure that seams are free from defects in stitching, heat sealing, or gluing. The requirements in this section would not apply to DOT Specification 56 and 57 portable tanks.

49 App. U.S.C. 1804(a)(4) (A) and (B).

In a February 28, 1991 final rule [56 FR 8616], RSPA added a new preemption standard to § 107.202 to mirror the requirements of the Hazardous Materials Transportation Act (HMTA). Section 105(a)(5) of the HMTA, as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), provides that if DOT issues a regulation concerning any of the covered subjects after the date of enactment of the HMTUSA (November 16, 1990), DOT must determine and publish in the **Federal Register** the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance.

To the extent that the requirements of Docket HM–181E involve covered subjects, States, political subdivisions, or Indian tribes would only be allowed to establish, maintain, and enforce laws, regulations, or other requirements concerning such subjects if they are substantively the same as the requirements proposed in Docket HM–181E. In a May 13, 1992 final rule [57 FR 20424] RSPA defined the phrase "substantially the same". Therefore, RSPA is requesting public comments on the effective date for the Federal preemption of the requirements of Docket HM–181E.

Administrative Notices

A. Executive Order 12291

This rule, as proposed, does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule and is not a significant rule under the regulatory procedures of

the Department of Transportation [44 U.S.C. 11034]. This proposed rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act [42 U.S.C. 4321 et seq.]. A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 and, based on information available at this time, RSPA does not believe that this notice would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB control number 2137-0018 (expiration date: July 31, 1992).

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Explosives, Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 178 and 180 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

2. In the § 171.7(a)(3) Table, the following entries are added at the end of the entries under *International Organization for Standardization* to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * *	
International Organization for Standardization	
* * * * *	
ISO 3036-1975 Puncture resistance standard	178.708
ISO 9000 Quality assurance standard	178.801
* * * * *	

* * * * *

3. In § 171.8, the following definitions would be added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Intermediate bulk containers (IBCs) are rigid, semi-rigid, or flexible portable packagings other than those specified in subpart L of part 178 of this subchapter that have a capacity of not more than 3000 liters (797 gallons) and not less than 450 L (119 gallons), and are designed for mechanical handling.

* * * * *

Secondary containment means placing the IBCs into freight containers or vehicles. Such freight containers or vehicles should have rigid sides or fencing at least to the height of the IBCs. For some substances and materials, a closed freight container or vehicle is specified.

* * * * *

§ 171.12 [Amended]

4. In § 171.12, paragraph (b)(5) would be amended by revising the word "Bulk" to read "bulk" and by adding the wording "Except for intermediate bulk containers which comply with the requirements of the IMDG Code," immediately preceding the word "bulk".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

6. In § 172.101, the following entries in the Hazardous Materials Table would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[Revise]												
	Acetyl chloride	3	UN1717	II	Flammable liquid, corrosive.	A3, A6, A7, B100, N34, T18, T26.	None	202	243	1 L	5 L	B	40
	Acetyl iodide	8	UN1898	II	Corrosive	B2, B101, T9	154	202	242	1 L	30 L	C	8, 40
	Alkali metal amides	4.3	UN1390	II	Dangerous when wet.	A6, A7, A8, A19, A20, B102.	None	212	241	15 kg	50 kg	E	40
	Allyl ethyl ether	3	UN2335	II	Flammable liquid, poison.	B101, T8	None	202	243	1 L	60 L	E	40
	Allyl iodide	3	UN1723	II	Flammable liquid, corrosive.	A3, A6, B100, N34, T18.	None	201	243	0.5 L	2.5 L	B	40
	Ammonium nitrate, liquid (*hot concentrated solution*).	5.1	UN2426		Oxidizer	B5, B100, B17, T25.	None	None	243	Forbidden	Forbidden	D	59, 60
	Benzene	3	UN1114	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Benzotrichloride	8	UN2226	II	Corrosive	B2, B101, T15.	154	202	242	1 L	30 L	A	40
	Butyl vinyl ether, inhibited.	3	UN2352	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	B	40
	n-Butylamine	3	UN1125	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Butyryl chloride	3	UN2353	II	Flammable liquid, corrosive.	B100, T9, T26.	None	202	243	1 L	5 L	C	40
	Calcium hypochlorite mixtures, dry, *with more than 10 per cent but not more than 39 per cent available chlorine.*	5.1	UN2208	III	Oxidizer	A1, A29, B103, N34.	152	213	240	25 kg	100 kg	A	56, 58, 69, 106
	Calcium silicide	4.3	UN1405	II	Dangerous when wet.	A19, B100	None	212	241	15 kg	50 kg	B	85, 103
				III	Dangerous when wet.	A1, A19	None	213	241	25 kg	100 kg	B	85, 103
	Chloral, anhydrous, inhibited.	6.1	UN2075	II	Poison	B101, T14	None	212	243	25 kg	100 kg	D	40
	Chlorobutanes	3	UN1127	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Chloroformates, n.o.s., *flash point not less than 23 degrees C.*	6.1	UN2742	II	Poison, corrosive.	5, B101	None	202	243	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Chloromethyl-chloroformate.	6.1	UN2745	II	Poison, corrosive.	B101, T18	None	202	243	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Chloropicrin mixtures, n.o.s.	6.1	UN1583	I	Poison	5	None	201	243	Forbidden	Forbidden	C	40
				II	Poison	B100	None	202	243	Forbidden	Forbidden	C	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	Keep away from food.	B100	153	203	241	Forbidden	Forbidden	C	40
	Chlorosilanes, n.o.s., *flashpoint not less than 23 degrees C.*	8	UN2986	II	Corrosive, flammable liquid.	B100	None	202	243	1 L	30 L	C	23, 40
	Chlorosilanes, n.o.s. *flashpoint less than 23 degrees C.*	3	UN2985	II	Flammable liquid, corrosive.	B100, T18, T26.	None	201	243	1 L	5 L	B	40
	Cyclobutylchloroformate.	6.1	UN2744	II	Poison, corrosive.	B101, T18	None	202	243	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Cyclohexane	3	UN1145	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Cyclohexene	3	UN2256	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	E	
	Cyclohexylamine	8	UN2357	II	Corrosive, flammable liquid.	B100, T8, T26.	None	202	243	1 L	30 L	A	12, 21, 40, 48
	Cyclopentane	3	UN1146	II	Flammable liquid.	B101, T14	150	202	242	5 L	60 L	E	
	Cyclopentene	3	UN2246	II	Flammable liquid.	B101, T13	150	202	242	5 L	60 L	E	
	Diallylether	3	UN2360	II	Flammable liquid, poison.	B101, N12, T8.	None	202	243	1 L	60 L	E	40
	1,1-Dichloroethane	3	UN2362	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	B	40
	Diethyl sulfate	6.1	UN1594	II	Poison	B101, T14	None	202	243	5 L	60 L	C	
	Diethyl sulfide	3	UN2375	II	Flammable liquid.	B101, T14	None	202	243	1 L	60 L	E	
	Diethylamine	3	UN1154	II	Flammable liquid.	B101, N34, T8.	150	202	242	5 L	60 L	E	
	Diethyldichlorosilane	8	UN1767	II	Corrosive, flammable liquid.	A7, B6, N34, B100, T8, T26.	None	202	243	Forbidden	30 L	C	21, 40
	Diisopropyl ether	3	UN1159	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	40
	Diisopropylamine	3	UN1158	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Dimethyl sulfide	3	UN1164	II	Flammable liquid.	B100, T14	None	201	243	1 L	30 L	E	40
	Dinitrotoluenes, molten.	6.1	UN1600	II	Poison	B100, T14	None	202	243	Forbidden	Forbidden	C	
	Ethyl bromide	6.1	UN1891	II	Poison	B100, T17	None	202	243	5 L	60 L	B	40
	Ethyl butyl ether	3	UN1179	II	Flammable liquid.	B1, B101, T1	150	202	242	5 L	60 L	B	
	Ethyl propyl ether	3	UN2615	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	2-Ethylhexylchloroformate.	6.1	UN2748	II	Poison, corrosive.	B101, T42	None	202	243	1 L	30 L	A	12, 13, 25, 40, 48, 95
	Ethyltrichlorosilane	3	UN1196	II	Flammable liquid, corrosive.	A7, B100, N34, T15, T26.	None	201	243	Forbidden	2.5 L	B	40
	Ferrous metal borings, shavings, turnings *or* cuttings *in a form liable to self-heating.*	4.2	UN2793	III	Spontaneously combustible.	A1, A19, B102.	None	213	241	25 kg	100 kg	A	
	Fluorobenzene	3	UN2387	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Gasoline	3	UN1203	II	Flammable liquid.	B33, B101, T8.	150	202	242	5 L	60 L	E	
	n-Heptene	3	UN2278	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Hexadienes	3	UN2458	II	Flammable liquid.	B101, T7	None	202	242	5 L	60 L	B	
	Hexamethylene diisocyanate.	6.1	UN2281	II	Poison	B101, T14	None	202	243	5 L	60 L	B	13, 40
	Hexamethyleneimine	3	UN2493	II	Flammable liquid, corrosive.	B100, T8	None	202	243	1 L	5 L	B	40
	Hexanes	3	UN1208	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	1-Hexene	3	UN2370	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Hydrogen peroxide and peroxyacetic acid mixtures, *with acids, water and not more than 5 per cent peroxyacetic acid, stabilized.*	5.1	UN3149	II	Oxidizer, corrosive.	A2, A3, A6, B12, B53, B104, T14.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with more than 40 per cent but not more than 60 per cent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	Oxidizer, corrosive.	12, A3, A6, B12, B53, B80, B81, B85, B104, T14, T37.	None	202	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 8 per cent but less than 20 per centhydrogen peroxide (stabilized as necessary).*	5.1	UN2984	III	Oxidizer	17, A1, B104, T8, T37.	152	203	241	2.5 L	30 L	B	25, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 20 per cent but not more than 40 per cent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	Oxidizer, corrosive.	A2, A3, A6, B12, B53, B104. T14, T37.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hypochlorite solutions *with more than 5 per cent but less than 16 per cent available chlorine.*	8	UN1791	III	Corrosive	B104, N34, T7.	154	203	2412	5 L	60 L	B	26
	Isobutylamine	3	UN1214	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Isobutyryl chloride	3	UN2395	II	Flammable liquid, corrosive.	B100, T9, T26.	None	202	243	1 L	5 L	C	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Isocyanato- benzotrifluorides.	6.1	UN2285	II	Poison	5, B101, T14	None	202	243	5 L	60 L	B	25, 40, 48
	Lithium hydride, fused solid.	4.3	UN2805	II	Dangerous when wet.	A8, A19, A20, B102.	None	212	241	15 kg	50 kg	E	
	Methyl acetate	3	UN1231	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Methyl allyl chloride	3	UN2554	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Methyl bromoacetate	6.1	UN2643	II	Poison	B100, T8	None	202	243	5 L	60 L	D	40
	Methyl tert butyl ether.	3	UN2398	II	Flammable liquid.	B101, T14	150	202	242	5 L	60 L	E	
	Methyl propionate	3	UN1248	II	Flammable liquid.	B101, T2	150	202	242	5 L	60 L	B	
	Methyltetrahydrofuran.	3	UN2536	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	B	
	Natural gasoline	3	UN1257	I	Flammable liquid.	T8	150	201	243	1 L	30 L	E	
				II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Nitrating acid mixtures, spent *with not more than 50 percent nitric acid.*	8	UN1826	II	Corrosive	B2, B100, T12, T27.	None	158	242	Forbidden	30 L	D	40
	p-Nitrosodimethylaniline.	4.2	UN1369	II	Spontaneously combustible.	A19, A20, B102, N34.	None	212	241	15 kg	50 kg	D	34
	Paper, unsaturated oil treated *incompletely dried (including carbon paper).*	4.2	UN1379	III	Spontaneously combustible.	B102	None	213	241	Forbidden	Forbidden	A	
	Perchloric acid not more than 50 percent acid by mass.	8	UN1802	II	Corrosive, oxidizer.	B101, N41, T9.	None	202	243	Forbidden	30 L	C	66, 89
	Phenol, molten	6.1	UN2312	II	Poison	B14, B100, T8.	None	202	243	Forbidden	Forbidden	B	40
+	Phenyl isocyanate	6.1	UN2487	II	Poison	B101	None	227	244	5 L	60 L	D	40
	Phenylchloroformate	6.1	UN2746	II	Poison, corrosive.	B101, T12	None	202	243	1 L	30 L	A	12, 13, 25, 40, 48
	Propionyl chloride	3	UN1815	II	Flammable liquid, corrosive.	B100, T8, T26.	None	202	243	1 L	5 L	B	40
	Self-heating substances, solid, n.o.s.,	4.2	UN3088	II	Spontaneously combustible.	B101	None	212	241	25 kg	100 kg	C	
				III	Spontaneously combustible.	B101	None	213	241	25 kg	100 kg	C	
	Thiophene	3	UN2414	II	Flammable liquid.	B101, T2	150	202	242	5 L	60 L	B	40
	Thiophosphoryl chloride.	8	UN1837	II	Corrosive	A3, A7, B2, B8, B25, B101, N34, T12.	None	202	242	Forbidden	30 L	C	8, 40
	Toluene diisocyanate	6.1	UN2078	II	Poison	B101, T14	None	202	243	5 L	60 L	B	25, 40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Triethylamine	3	UN1296	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Vinyl ethyl ether, inhibited.	3	UN1302	II	Flammable liquid.	A3, B100, T14.	None	201	243	1 L	30 L	E	
	Vinylpyridenes, inhibited.	6.1	UN3073	II	Poison, flammable liquid.	B100, T8	None	212	243	5 L	60 L	B	40

7. In § 172.102, paragraph (c)(3) would be amended by adding Special Provisions B100, B101, B102, B103, and B104 in numerical order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(3) * * *

Code/Special Provisions

* * * * *

B100 IBCs are not authorized.

B101 Rigid plastic and composite IBCs are not authorized

B102 Flexible, rigid plastic, composite, fiberboard, and wooden IBCs are not authorized.

B103 If an IBC packaging is used, the package must be transported in a closed transport vehicle.

B104 IBCs must be provided with a device to allow venting during transport. The inlet must be situated in the vapor space of the packaging and lading during transport.

* * * * *

8. In § 172.514, paragraph (c)(3) would be amended by replacing the period at the end of the paragraph with a semicolon; and paragraph (c)(4) would be added to read as follows:

§ 172.514 Bulk packagings other than tank cars.

* * * * *

(c) * * *

(4) All intermediate bulk containers.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. The authority citation for Part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

10. In § 173.24, paragraph (j) would be added to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(j) When packagings are used for the transportation of liquids with a flashpoint of 60.5°C (141°F) (closed cup) or lower, or powders liable to dust explosion, measures must be taken to prevent a dangerous electrostatic discharge.

10a. In § 173.32, paragraph (d) would be revised to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

* * * * *

(d) *Use of Specifications 52, 53, 56 and 57 tanks.* Continued use of an existing portable tank constructed to Specification 52 or 53 is authorized only for a tank constructed before June 1, 1972. Continued use of an existing portable tank constructed to Specification 56 or 57 is authorized only for a tank constructed before October 1, 1996.

* * * * *

11. Section 173.35 would be added to read as follows:

§ 173.35 Hazardous materials in intermediate bulk containers (IBCs).

(a) No person may offer or accept a hazardous material for transportation in an IBC except as authorized by this subchapter. Each IBC used for the transportation of hazardous materials must conform to the requirements of its specification and regulations for the transportation of the particular commodity. A specification IBC, for which the prescribed periodic retest or inspection under subpart D of part 180 of this subchapter is past due, may not be filled and offered for transportation until the retest and inspection have been successfully completed. This requirement does not apply to any IBC filled prior to the retest or inspection due date.

(b) Before being filled and offered for transportation, each IBC and its service equipment must be visually inspected to ensure that it is free from corrosion, contamination, cracks, or other damage which would render the IBC unsafe for transportation. No rigid plastic or composite IBCs with repaired plastic components may be reused. Fiberboard, wooden, or flexible IBCs may not be reused.

(c) A metallic IBC, or a part thereof, subject to thinning by corrosion or mechanical abrasion due to the lading, must be protected by providing the IBC, or part of the IBC, with a suitable increase in thickness of material, a lining or some other suitable method of protection. Increased thickness for corrosion or abrasion protection must be added to the wall thickness specified in § 178.705(c)(1)(iv) of this subchapter.

(d) Notwithstanding requirements in § 173.24b, when filling IBCs with liquids, sufficient ullage must be left to ensure that, at the mean bulk temperature of 50°C (122°F), the IBC is not filled to more than 98% of its water capacity.

(e) Where two or more closure systems are fitted in series, that nearest to the substance being carried must be closed first.

(f) During transportation—

(1) No hazardous material may remain on the outside of the IBC; and

(2) IBCs must be securely fastened to or contained within the transport unit.

(g) IBCs used for solids which may become liquid at temperatures likely to be encountered during transportation must also be capable of containing the substance in the liquid state.

(h) Unless otherwise approved by the Associate Administrator for Hazardous Materials Safety, the authorized period of use of rigid plastic IBCs and the plastic inner receptacles of composite IBCs for the transportation of hazardous materials is five years from the date of manufacture.

(i) Liquid hazardous materials can only be offered for transportation in metallic, rigid plastic, or composite IBCs that are appropriately resistant to an increase of internal pressure likely to develop during transportation.

(1) Rigid plastic or composite IBCs must be filled only with a liquid having a vapor pressure:

(i) Such that the total guage pressure in the IBC (i.e., the vapor pressure of the filling substance plus the partial pressure of air or other inert gases, less 100 kPa (14.5 psig)) at 55°C (131°F), determined on the basis of a maximum degree of filling in accordance with paragraph (d) of this section and a filling temperature of 15°C (27°F)), will not exceed two-thirds of the marked test pressure; or

(ii) At 50°C (122°F), less than four-sevenths of the sum of the marked test pressure plus 100 kPa (14.5 psig); or

(iii) At 55°C (131°F), less than two-thirds of the sum of the marked test pressure plus 100 kPa (14.5 psig).

(2) IBCs may not be used to carry liquids having a vapor pressure of more than 110 kPa (16 psig) at 50°C (122°F) or 130 kPa (18.9 psig) at 55°C (131°F).

(j) The requirements in this section do not apply to DOT Specification 56 and 57 portable tanks.

11a. In § 173.225, the following entries in the Organic Peroxides Table in paragraph (b) would be revised, "Note 24" would be added to the "Notes" following the Organic Peroxides Table and paragraph (e)(4) would be added to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

ORGANIC PEROXIDES TABLE

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
[Revised]										
Di-(4-tert-butycyclohexyl)peroxydicarbonate as a stable dispersion in water.	UN3119	<=42					OP8A	30	35	24
Dicetyl peroxydicarbonate as a stable dispersion in water.	UN3119	<=42					OP8A	30	35	24
Dilauroyl peroxide as a stable dispersion in water	UN3109	<=42					OP8A			24
Dimyristyl peroxydicarbonate as a stable dispersion in water.	UN3119	<=42					OP8A	30	35	24

Notes:

* * * * * *

24. This material may be transported in IBCs under the provision of § 173.225(e)(4).

* * * * *

(e) * * *

(4) *Intermediate bulk containers.* Specification 31HA1 composite IBCs that are tested at the packing group II performance level in accordance with Part 178 of this subchapter.

12. In § 173.240, paragraph (d) would be added to read as follows:

§ 173.240 Bulk packaging for certain low hazard solid materials.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in Part 178 of this subchapter at the packing group performance level specified in column 5 of the § 172.101 Table for the material being transported:

(i) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(ii) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig) (21A, 21B, 21N);

(iii) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(iv) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(v) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(vi) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(vii) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(viii) Composite IBCs with flexible plastic inner receptable loaded or discharged by gravity (11HZ2);

(ix) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(x) Composite IBCs with flexible plastic inner receptacle or discharged under pressure (21HZ2);

(xi) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(xii) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(xiii) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(xiv) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(xv) Woven plastic IBCs without coating or liner (13H1);

(xvi) Coated woven plastic IBCs (13H2);

(xvii) Woven plastic IBCs with liner (13H3);

(xviii) Coated woven plastic IBCs with liner (13H4);

(xix) Plastic film IBCs (13H5);

(xx) Textile IBCs without coating or liner (13L1);

(xxi) Coated textile IBCs (13L2);

(xxii) Textile IBCs with liner (13L3);

(xxiii) Coated textile IBCs with liner (13L4);

(xxiv) Paper multiwall IBCs (13M1);

(xxv) Paper multiwall water resistant IBCs (13M2);

(xxvi) Metallic IBCs (31A, 31B, 31N);

(xxvii) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(xxviii) Freestanding rigid plastic IBCs (31H2);

(xxix) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(xxx) Composite IBCs with flexible inner receptacles (31HZ2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For composite IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

13. In § 173.241, paragraph (d) would be added to read as follows:

§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in Part 178 of this subchapter at the packing group performance level specified in column 5 of the § 172.101 Table for the material being transported:

(i) For liquids and solids: (A) Metallic IBCs (31A, 31B, 31N);

(B) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(C) Freestanding rigid plastic IBCs (31H2);

(D) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(E) Composite IBCs with flexible inner receptacles (31HZ2).

(ii) For solids: (A) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(B) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psi) (21A, 21B, 21N);

(C) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(D) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(E) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(F) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(G) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(H) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(I) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(J) Composite IBCs with flexible plastic inner receptacle loaded or discharged under pressure (21HZ2)

(K) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(L) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(M) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(N) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(O) Woven plastic IBCs without coating or liner (13H1);

(P) Coated woven plastic IBCs (13H2);

(Q) Woven plastic IBCs with liner (13H3);

(R) Coated woven plastic IBCs with liner (13H4);
(S) Plastic film IBCs (13H5);
(T) Textile IBCs without coating or liner (13L1);
(U) Coated textile IBCs (13L2);
(V) Textile IBCs with liner (13L3);
(W) Coated textile IBCs with liner (13L4);
(X) Paper multiwall IBCs (13M1); and
(Y) Paper multiwall water resistant IBCs (13M2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For composite IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

14. In § 173.242, paragraph (d) would be added to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in part 178 of this subchapter at the packing group performance level specified in column 5 of the § 172.101 Table for the material being transported:

(i) For liquids and solids: (A) Metallic IBCs (31A, 31B, 31N);

(B) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(C) Freestanding rigid plastic IBCs (31H2);

(D) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(E) Composite IBCs with flexible inner receptacles (31HZ2).

(ii) For solids: (A) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(B) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig) (21A, 21B, 21N);

(C) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(D) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(E) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(F) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(G) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(H) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(I) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(J) Composite IBCs with flexible plastic inner receptacle loaded or discharged under pressure (21HZ2);

(K) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(L) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(M) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(N) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(O) Woven plastic IBCs without coating or liner (13H1);

(P) Coated woven plastic IBCs (12H2);

(Q) Woven plastic IBCs with liner (13H3);

(R) Coated woven plastic IBCs with liner (13H4);

(S) Plastic film IBCs (13H5);

(T) Textile IBCs without coating or liner (13L1);

(U) Coated textile IBCs (13L2);

(V) Textile IBCs with liner (13L3);

(W) Coated textile IBCs with liner (13L4);

(X) Paper multiwall IBCs (13M1); and

(Y) Paper multiwall water resistant IBCs (13M2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For composite IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

15. In § 173.243, paragraph (d) would be added to read as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual hazard liquids which pose a moderate hazard.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in part 178 of this subchapter at the packing group performance level specified in column 5

of the § 172.101 Table for the material being transported:

(i) For liquids and solids: (A) Metallic IBCs (31A, 31B, 31N);

(B) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(C) Freestanding rigid plastic IBCs (31H2);

(D) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(E) Composite IBCs with flexible inner receptacles (31HZ2).

(ii) For solids: (A) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(B) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig) (21A, 21B, 21N);

(C) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(D) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(E) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(F) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(G) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(H) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(I) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(J) Composite IBCs with flexible plastic inner receptacle loaded or discharged under pressure (21HZ2);

(K) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(L) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(M) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(N) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(O) Woven plastic IBCs without coating or liner (13H1);

(P) Coated woven plastic IBCs (13H2);

(Q) Woven plastic IBCs with liner (13H3);

(R) Coated woven plastic IBCs with liner (13H4);

(S) Plastic film IBCs (13H5);

(T) Textile IBCs without coating or liner (13L1);

(U) Coated textile IBCs (13L2);

(V) Textile IBCs with liner (13L3);

(W) Coated textile IBCs with liner (13L4)

(X) Paper multiwall IBCs (13M1); and

(Y) Paper multiwall water resistant IBCs (13M2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For complete IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

PART 178—SPECIFICATIONS FOR PACKAGINGS

16. The authority citation for part 178 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

16a. Section 178.252–1 would be amended by adding paragraph (c) to read as follows:

§ 178.252–1 General requirements.

* * * * *

(c) The manufacture of these specification packagings is not allowed after October 1, 1996.

17. Section 178.253–1 would be amended by adding paragraph (c) to read as follows:

§ 178.253–1 General requirements.

* * * * *

(c) The manufacture of these specification packagings is not allowed after October 1, 1996.

17a. Subpart N would be added to Part 178 to read as follows;

Subpart N—Intermediate Bulk Container Performance-Oriented Standards

Sec.

178.700 Purpose, scope and definitions.
178.702 IBC identification codes.
178.703 Marking of IBCs.
178.704 General IBC standards.
178.705 Standards for metallic IBCs.
178.706 Standards for rigid plastic IBCs.
178.707 Standards for composite IBCs.
178.708 Standards for fiberboard IBCs.
178.709 Standards for wooden IBCs.
178.710 Standards for flexible IBCs.

Subpart N—Intermediate Bulk Container Performance-Oriented Standards

§ 178.700 Purpose, scope and definitions.

(a) This subpart prescribes requirements applying to intermediate bulk containers (IBCs) intended for the transport of hazardous materials. Standards for these packagings are based on the UN Recommendations.

(b) IBCs are generally defined in § 171.8 of this subchapter. The following definitions pertain to the IBC standards in this part.

(1) *Body* means the receptacle proper, including openings and their closures.

(2) *Service equipment* means filling and discharge, pressure relief, safety, heating and heat-insulating devices and measuring instruments.

(3) *Structural Equipment* means the reinforcing, fastening, handling, protective or stabilizing members of the body; for example, metal cages.

(4) *Maximum permissible gross mass* means the mass of the body and its service equipment and structural equipment and the maximum permissible load.

§ 178.702 IBC identification codes

(a) IBC code designations consist of: two numerals specified in paragraph (a)(1) of this section; and followed by the capital letter(s) specified in paragraph (a)(2) of this section; followed, when specified in an individual section, by a numeral indicating the category of IBC.

(1) IBC code number designations are presented in the following table:

Type	For solids, discharged		For liquids
	By gravity	Under pressure of more than 10 kpa (1.45 psi)	
Rigid	11	21	31
Semi-rigid	12	22	32
Flexible	13		

(2) *A* means steel (all types and surface treatments).
B means aluminum.
C means natural wood.
D means plywood.
F means reconstituted wood.
G means fiberboard.
H means plastic material.
L means textile.
M means paper, multiwall.
N means metal (other than steel or aluminum).

(b) For composite IBCs, two capital letters are used in sequence following the numeral indicating IBC design type. The first letter indicates the material of the IBC inner receptacle. The second letter indicates the outer IBC packaging material. The letter *z* is replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 31HA1 is a composite IBC with a metal outer packaging.

§ 178.703 Marking of IBCs.

(a) The manufacturer shall: (1) Mark every IBC in a durable and clearly visible manner with the following information in the sequence presented:

(i) The United Nations symbol as illustrated in § 178.503(d)(1). For metallic IBCs on which the marking is stamped or embossed, the capital letters "UN" may be applied instead of the symbol;

(ii) The code number designating IBC design type according to § 178.702(a) (1) and (2);

(iii) A capital letter designating the packing group(s) for which the design type has been approved:

(A) Y for IBCs meeting Packing group II and III tests; and

(B) Z for IBCs meeting Packing group III tests only;

(iv) The month and year (last two digits) of manufacture;

(v) The country authorizing the allocation of the mark. The letters "USA" indicate that the IBC is manufactured and marked in the United States in compliance with the provisions of this subchapter;

(vi) The name and address or symbol of the manufacturer or the approval agency certifying compliance with Subparts N and O of this Part. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety;

(vii) The stacking test load in kilograms (kg). For IBCs not designed for stacking, the figure "0" must be shown; and

(viii) The maximum permissible gross mass or, for flexible IBCs, the maximum permissible load, in kg.

(2) The following are examples of symbols and required markings:

(i) For a metallic IBC containing solids discharged by gravity made from steel:

(ii) For a flexible IBC containing solids discharged by gravity and made from woven plastic with a liner:

(iii) For a rigid plastic IBC containing liquids, made from plastic with structural equipment withstanding the stack load:

(iv) For a composite IBC containing liquids, with a rigid plastic inner receptacle and an outer steel body:

(b) *Additional marking.* In addition to markings in paragraph (a) of this section, each metallic, rigid plastic and composite IBC must be marked as follows in a place readily accessible for inspection. Where units of measure are used, they should be marked in both metric and US standard units e.g., 450 liters (119 gallons).

(1) For each rigid plastic and composite IBC, the following markings must be included on each plate:

(i) Capacity in liters (gallons) of water at 20 °C (68 °F);

(ii) Tare mass in kilograms (pounds);

(iii) Gauge test pressure in kPa or psig;

(iv) Date of last leakproofness test, if applicable (month and year); and

(v) Date of last inspection (month and year).

(2) For each metallic IBC, the following markings must be included on a metal corrosion-resistant plate:

(i) Capacity in liters (gallons) of water at 20 °C (68 °F);

(ii) Tare mass in kilograms (pounds);

(iii) Date of last leakproofness test, if applicable (month and year);

(iv) Date of last inspection (month and year);

(v) Maximum loading/discharge pressure, in kPa or psig, if applicable;

(vi) Body material and its minimum thickness in mm; and

(vii) Serial number assigned by the manufacturer.

(3) For each fiberboard and wooden IBC, the tare mass in kg must be shown.

(4) Each flexible IBC may be marked with a pictogram displaying recommended lifting methods.

§ 178.704 General IBC standards.

(a) IBCs must be resistant to, or protected from, deterioration due to exposure to the external environment.

(b) All service equipment must be so positioned or protected as to minimize potential loss of contents resulting from damage during IBC handling and transportation.

(c) IBC packagings, including attachments, and service and structural equipment, must be designed to withstand, without loss of hazardous materials, the internal pressure of the contents and the stresses of normal handling and transport. IBCs intended for stacking must be designed for stacking. Any lifting or securing features of IBCs must be of sufficient strength to withstand the normal conditions of handling and transport without gross distortion or failure and must be positioned so as to cause no undue stress in any part of the IBC.

(d) An IBC consisting of a packaging within a framework must be so constructed that:

(1) The body is not damaged by the framework;

(2) The body is retained within the framework at all times; and

(3) The items of equipment are fixed in such a way that they cannot be damaged if the connections between

body and frame allow relative expansion or movement.

(e) Bottom discharge valves must be secured in the closed position and the discharge system suitably protected from damage. Valves having lever closures must be secured against accidental opening. The open or closed position must be readily apparent. For IBCs containing liquids, a secondary means of sealing the discharge aperture must also be provided, e.g., by a blank flange or equivalent device.

§ 178.705 Standards for metallic IBCs.

(a) The provisions in this section apply to metallic IBCs intended to contain liquids and solids. Metallic IBC types include:

(1) 11A, 11B, 11N for solids which are loaded or discharged by gravity;

(2) 21A, 21B, 21N for solids which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig); and

(3) 31A, 31B, 31N for liquids and solids.

(b) Definitions for metallic IBCs:

(1) *A metallic IBC* means a metal body together with appropriate service and structural equipment;

(2) *Protected* means being provided with additional protection against impact, for example, a multi-layer (sandwich) or double wall construction or a frame with a metal lattice-work casing.

(c) Construction requirements for metallic IBCs are as follows:

(1) *Body.* The body must be made of ductile metallic materials. Welds must be made so as to maintain design type integrity of the receptacle under conditions normally incident to transportation.

(i) The use of dissimilar metals must not result in deterioration that could affect the integrity of the body.

(ii) Aluminum IBCs intended to contain flammable liquids must have no movable parts, such as covers, closures etc., made of unprotected steel liable to rust, which might cause a dangerous reaction from friction or percussive contact with the aluminum.

(iii) Metallic IBCs must meet the following requirements:

(A) For steel, the percentage elongation at fracture must not be less than 10,000/Rm with a minimum of 20 percent; where Rm= guaranteed minimum tensile strength of the steel to be used, in N/mm²; if English units of pounds per square inch are used for tensile strength then the ratio becomes 10,000/(145Rm);

(B) For aluminum, the percentage elongation at fracture must not be less than 10,000/6 Rm with an absolute minimum of eight percent; if English units of pounds per square inch are used for tensile strength then the ratio becomes 10,000/(870Rm);

(c) Specimens used to determine the elongation at fracture must be taken transversely to the direction of rolling and be so secured that:

$Lo = 5d$

or

$Lo = 5.65\sqrt{A}$

where:

Lo = gauge length of the specimen before the test

d = diameter

A = cross-sectional area of test specimen.

(iv) Minimum wall thickness:

(A) For a reference steel having a product of Rm x Ao = 10,000 (Rm x Ao = 69.0, if tensile strength is in English units of pounds per square inch) the wall thickness must not be less than:

Capacity in liters [1]	Wall thickness in mm (inches)			
	Types—11A, 11B, 11N		Types—21A, 21B, 21N, 31A, 31B, 31N	
	Unprotected	Protected	Unprotected	Protected
>450 and <1000	2.0 (0.079)	1.5 (0.059)	2.5 (0.098)	2.0 (0.079)
>1000 and <2000	2.5 (0.098)	2.0 (0.079)	3.0 (0.120)	2.5 (0.098)
>2000 and <3000	3.0 (0.120)	2.5 (0.098)	4.0 (0.160)	3.0 (0.120)

Where: A_o = minimum elongation (as a percentage) of the reference steel to be used on fracture under tensile stress (see § 178.705(c)(1)(iv)).

[1] where: gallons = liters × 0.264.

(B) For metals other than the reference steel described in paragraph (v)(A), the minimum wall thickness is given by the following equivalence formula:

Formula for metric units

$$e_1 = \frac{21.4 \times e_0}{\sqrt[3]{Rm_1 \times A_1}}$$

Formula for nonmetric units

$$e_1 = \frac{0.843 \times e_0}{\sqrt[3]{145 \times (Rm_1 \times A_1)}}$$

where:

e_1 = required equivalent wall thickness of the metal to be used (in mm) (if e_o is in inches, use formula for nonmetric units);

e_o = required minimum wall thickness for the reference steel (in mm) (if e_o is in inches, use formula for nonmetric units);

Rm_1 = guaranteed minimum tensile strength of the metal to be used (in N/mm²) (for nonmetric units use pounds per square inch);

A_1 = minimum elongation (as a percentage) of the metal to be used on fracture under tensile stress (see § 178.705(c)(1));

Wall thickness shall not be less than 1.5 mm (0.059 inches).

(2) *Pressure relief.* The following relief requirements apply to IBCs intended for liquids:

(i) IBCs must be capable of releasing a sufficient amount of vapor in the event of fire engulfment to ensure that no rupture of the body will occur. This can be achieved by spring-loaded pressure relief devices or by other means of construction. Rupture discs are not allowed; and

(ii) The start to discharge pressure must not be higher than 65 kPa (9 psig) and no lower than the vapor pressure of the filling substance plus the partial pressure of the air or other inert gases, minus 100 kPa (14.5 psig)) at 55°C (131°F), determined on the basis of a maximum degree of filling as defined in § 173.35 of this subchapter. Pressure relief devices must be fitted in the vapor space.

§ 178.706 Standards for rigid plastic IBCs.

(a) The provisions in this section apply to rigid plastic IBCs intended to contain solids or liquids. Rigid plastic IBC types include:

(1) 11H1 fitted with structural equipment designed to withstand the whole load when IBCs are stacked, for solids which are loaded or discharged by gravity;

(2) 11H2 freestanding, for solids which are loaded or discharged by gravity;

(3) 21H1 fitted with structural equipment designed to withstand the whole load when IBCs are stacked, for solids which are loaded or discharged under pressure;

(4) 21H2 freestanding, for solids which are loaded or discharged under pressure;

(5) 31H1 fitted with strutural equipment designed to withstand the whole load when IBCs are stacked, for liquids; or

(6) 31H2 freestanding, for liquids.

(b) *Rigid plastic IBCs* consist of a rigid plastic body, which may have structural equipment, together with appropriate service equipment.

(c) Rigid plastic IBCs must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform. In addition to complying with § 173.24 of this subchapter, plastic materials must be resistant to aging and to degradation caused by ultraviolet radiation.

(1) If protection against ultraviolet radiation is necessary, it must be provided by the addition of a pigment or inhibiter such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the IBC body. Where use is made of carbon black, pigments or inhibitors, other than those used in the manufacture of the tested design type, re-testing may be omitted if changes in the carbon black content, the pigment content or the inhibitor content do not adversely affect the physical properties of the material of construction.

(2) Additives may be included in the composition of the plastic material to improve the resistance to aging or to serve other purposes, provided they do not adversely affect the physical or chemical properties of the material of construction.

(3) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of rigid plastic IBCs.

(4) IBCs must be capable of releasing a sufficient amount a vapor in the event of fire engulfment to ensure that no rupture of the body will occur. This can be achieved by spring-loaded pressure relief devices or by other means of construction. Rupture discs are not allowed. The device or other means of construction must be capable of releasing sufficient vapor to ensure that neither leakage nor permanent distortion of the IBC will occur if it is subjected to an internal pressure in excess of that for which it was hydraulically tested.

§ 178.707 Standards for composite IBCs.

(a) The provisions in this section apply to:

(1) Composite IBCs intended to contain solids and liquids. Composite IBC types include:

(i) 1HZ1 Composite IBCs with a rigid plastic inner receptacle for solids loaded or discharged by gravity;

(ii) 11HZ2 Composite IBCs with a flexible plastic inner receptacle for solids loaded or discharged by gravity;

(iii) 21HZ1 Composite IBCs with a rigid plastic inner receptacle for solids loaded or discharged under pressure;

(iv) 21HZ2 Composite IBCs with a flexible plastic inner receptacle for solids loaded or discharged under pressure;

(v) 31HZ1 Composite IBCs with a rigid plastic inner receptacle for liquids; or

(vi) 31HZ2 Composite IBCs with a flexible plastic inner receptacle for liquids.

(2) The marking code in paragraph (a)(1) of this section must be completed by replacing the letter Z by a capital letter in accordance with § 178.702(b) to indicate the material used for the outer packaging.

(b) Definitions for composite IBC types:

(1) A *composite IBC* consists of structural equipment in the form of a rigid outer packaging enclosing a plastic inner receptacle together with any service or other structural equipment. The inner receptacle and outer packaging are so constructed that the inner receptacle and the outer packaging form an integral packaging and are filled, stored, transported, and emptied as a unit.

(2) The term *plastic* applying in this section to inner receptacles also applies to other polymeric materials, such as polyethylene, rubber, etc.

(c) Construction requirements for composite IBCs with plastic inner receptacles are as follows:

(1) The outer packaging consists of rigid material formed so as to protect the inner receptacle from physical damage during handling and transportation, but is not intended to perform the secondary containment function. It includes the base pallet where appropriate. The inner receptacle is not intended to perform a containment function without the outer packaging.

(2) A composite IBC with a fully enclosing outer packaging must be designed to permit assessment of the integrity of the inner container following the leakproofness and hydraulic tests.

(3) The inner receptacle must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform. In addition to complying with the requirements of § 173.24 of this subchapter, the material must be resistant to aging and to degradation caused by ultraviolet radiation.

(i) If protection against ultraviolet radiation is necessary, it must be provided by the addition of pigments or inhibitors such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the inner receptacle. Where use is made of carbon black, pigments, or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if the carbon black content, the pigment content, or the inhibitor content do not adversely affect the physical properties of the material of construction.

(ii) Additives may be included in the composition of the plastic material of the inner receptacle to improve resistance to aging, provided they do not adversely affect the physical or chemical properties of the material.

(iii) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of inner receptacles.

(iv) IBCs must be capable of releasing a sufficient amount of vapor in the event of fire engulfment to ensure that no rupture of the body will occur. This can be achieved by spring-loaded pressure relief devices or by other means of construction. Rupture discs are not allowed. The device must be capable of releasing sufficient vapor to ensure that neither leakage nor permanent distortion of the IBC will occur if it is subjected to an internal pressure in excess of that for which it was hydraulically tested.

(4) The strength of the construction material comprising the outer packaging and the manner of construction must be appropriate to the capacity of the composite IBC and its intended use. The outer packaging must be free of any projection that might damage the inner receptacle.

(i) Outer packagings of natural wood must be constructed of well seasoned wood that is commercially dry and free from defects that would materially lessen the strength of any part of the outer packaging. The tops and bottoms may be made of water-resistant reconstituted wood such as hardboard or particle board.

(ii) Outer packagings of plywood must be made of well seasoned rotary cut, sliced, or sawn veneer, commercially dry and free from defects that would

materially lessen the strength of the casing. All adjacent plies must be glued with water resistant adhesive. Materials other than plywood may be used for the construction of components of outer packaging. Outer packagings must be firmly nailed or secured to corner posts or ends or be assembled by equally similar devices.

(iii) Outer packaging of reconstituted wood must be constructed of water-resistant reconstitute wood such as hardboard or particle board. Materials other than reconstituted wood may be used for the construction of components of outer packaging.

(iv) Fiberboard outer packaging must be constructed of strong, solid, or double-faced corrugated fiberboard (single or multiwall).

(A) Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 grams per square meter (0.0316 pounds per square foot) (see ISO International Standard 535–1976 (E)). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

(B) The ends of fiberboard outer packagings may have a wooden frame or be constructed entirely of wood. Wooden battens may be used for reinforcements.

(c) Manufacturers joints in the bodies of outer packagings must be taped, lapped, and glued, or lapped and stitched with metal staples.

(D) Lapped joints must have an appropriate overlap.

(E) Where closing is effected by gluing or taping, a water resistant adhesive must be used.

(iv) Outer packagings of plastic materials must be constructed in accordance with the relevant provisions of paragraph (c)(3) of this section.

(5) Any integral pallet base forming part of an IBC, or any detachable pallet, must be suitable for the mechanical handling of an IBC filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed to avoid any protrusion of the base of the IBC that might be liable to damage in handling;

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the IBC;

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner receptacle;

(iv) The bearing surfaces of IBCs intended for stacking must be designed to distribute loads in a safe manner. IBCs intended for stacking must be designed so that loads are not supported by the inner receptacle.

§ 178.708 Standards for fiberboard IBCs.

(a) The provisions of this section apply to fiberboard IBCs intended to contain solids which are loaded or discharged by gravity. Fiberboad IBCs are designated: 11G.

(b) Definitions for fiberboard IBC types:

(1) *Fiberboard IBCs* consist of a fiberboard body with or without separate top and bottom caps, if necessary and inner liner (but no inner packagings), appropriate service and structural equipment.

(2) *Liner* means a separate tube or bag inserted in the body but not forming an integral part of it, including the closures of its openings.

(c) Construction requirements for fiberboard IBCs are as follows:

(1) Top lifting devices are prohibited in fiberboard IBCs.

(2) Fiberboard IBCs must be constructed of strong, solid or double-faced corrugated fiberboard (single or multiwall) that is appropriate to the capacity of the outer packaging and its intended use. Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 g per square meter (0.0316 pounds per square foot)—see ISO International Standard 535–1976 (E). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

(i) The walls, including top and bottom, must have a minimum puncture resistance of 15J measured according to ISO International Standard 3036–1975.

(ii) Manufacturers joints in the bodies of IBCs must be made with an appropriate overlap and be taped, glued, stitched with metal staples or fastened by other means at least equally effective. Where joints are made by gluing or taping, a water resistant adhesive must be used. Metal staples must pass completely through all pieces to be fastened and be formed or protected so that any inner liner cannot be abraded or punctured by them.

(3) The strength of the material used and the construction of the liner must be appropriate to the capacity of the IBC and the intended use. Joints and closures must be sift proof and capable of withstanding pressures and impacts liable to occur under normal conditions of handling and transport.

(4) Any integral pallet base forming part of an IBC, or any detachable pallet, must be suitable for the mechanical handling of an IBC filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed so as to avoid any protrusion of the base of the IBC that might be liable to damage in handling.

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the IBC.

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner receptacle.

(iv) The bearing surfaces of IBCs intended for stacking must be designed to distribute loads in a stable manner.

§ 178.709 Standards for wooden IBCs.

(a) The provisions in this section apply to wooden IBCs intended to contain solids which are loaded or discharged by gravity. Wooden IBC types include:

(1) 11C Natural wood with inner liner;

(2) 11D Plywood with inner liner; and

(3) 11F Reconstituted wood with inner liner.

(b) Definitions for wooden IBCs:

(1) *Wooden IBCs* consist of a rigid or collapsible wooden body together with an inner liner (but no inner packagings) and appropriate service and structural equipment.

(2) *Liner* means a separate tube or bag inserted in the body but not forming an integral part of it, including the closures of its openings.

(c) Construction requirements for wooden IBCs are as follows;

(1) Top lifting devices are prohibited in wooden IBCs;

(2) The strength of the materials used and the method of construction must be appropriate to the capacity and intended use of the IBC.

(i) Natural wood used in the construction of an IBC must be well seasoned, commercially dry and free from defects that would materially

lessen the strength of any part of the IBC. Each IBC part must consist of uncut wood or a piece equivalent in strength and integrity. IBC parts are equivalent to one piece when a suitable method of glued assembly is used (i.e., a Linderman joint, tongue and groove joint, ship lap or rabbet joint; or butt joint with at least two corrugated metal fasteners at each joint, or when other methods at least equally effective are used).

(ii) Plywood used in construction of bodies must be at least 3-ply. Plywood must be made of well seasoned, rotary cut, sliced or sawn veneer, commercially dry, and free from defects that would materially lessen the strength of the body. All adjacent plies must be glued with water resistant adhesive. Materials other than plywood may be used for the construction of components of the outer packaging.

(iii) Reconstituted wood used in construction of bodies must be water resistant reconstituted wood such as hardboard or particle board.

(iv) Wooden IBCs must be firmly nailed or secured to corner posts or ends or be assembled by similar devices.

(3) The strength of the material used and the construction of the liner must be appropriate to the capacity of the IBC and its intended use. Joints and closures must be sift proof and capable of withstanding pressures and impacts liable to occur under normal conditions of handling and transport;

(4) Any integral pallet base forming part of an IBC, or any detachable pallet, must be suitable for the mechanical handling of an IBC filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed to avoid any protrusion of the base of the IBC that might be liable to damage in handling.

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the IBC.

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner receptacle.

(iv) The load bearing surfaces of IBCs intended for stacking must be designed to distribute loads in a safe manner.

§ 178.710 Standards for flexible IBCs.

(a) The provisions of this section apply to flexible IBCs intended to contain solid hazardous materials. Flexible IBC types include:

(1) 13H1 woven plastic without coating or liner;

(2) 13H2 woven plastic, coated;

(3) 13H3 woven plastic with liner;

(4) 13H4 woven plastic, coated and with liner;

(5) 13H5 plastic film;

(6) 13L1 textile without coating or liner;

(7) 13L2 textile, coated;

(8) 13L3 textile with liner;

(9) 13L4 textile, coated and with liner;

(10) 13M1 paper, multiwall; and

(11) 13M2 paper, multiwall, water resistant.

(b) Definitions for flexible IBCs:

(1) *Flexible IBCs* consist of a body constructed of film, woven fabric or any other flexible material or combination thereof, together with any appropriate service equipment and handling devices.

(1) *Woven plastic* means a material made from stretched tapes or monofilaments.

(3) *Handling device* means any sling, loop, eye, or frame attached to the body of the IBC or formed from a continuation of the IBC body material.

(c) Construction requirements for flexible IBCs are as follows:

(1) The strength of the material and the construction of the flexible IBC must be appropriate to its capacity and its intended use.

(i) All materials used in the construction of flexible IBCs of types 13M1 and 13M2 must, after complete immersion in water for not less than 24 hours, retain at least 85% of the tensile strength as measured originally on the material conditioned to equilibrium at 67% relative humidity or less.

(ii) Seams must be stitched or formed by heat sealing, gluing or any equivalent method. All stitched seam-ends must be secured.

(iii) In addition to complying with the requirements of § 173.24 of this subchapter, flexible IBC bodies must be resistant to aging and degradation caused by ultraviolet radiation.

(iv) For plastic flexible IBCs, if protection against ultraviolet radiation is necessary, it must be provided by the addition of pigments or inhibitors such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the inner receptacle. Where use is made of carbon black, pigments, or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if the carbon black content, the pigment content or the inhibitor content do not adversely affect the physical properties of the material of construction. Additives may be included in the composition of the plastic material of the inner receptacle to improve resistance to aging, provided they do not adversely affect the physical or chemical properties of the material.

(v) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of plastic flexible IBCs. This does not preclude the re-use of component parts such as fittings and pallet bases provided such components have not in any way been damaged in previous use.

(vi) When flexible IBCs are filled, the ratio of height to width shall not be more than 2:1.

18. Subpart O would be added to part 178 to read as follows:

Subpart O—Testing of Intermediate Bulk Containers

Sec.

178.800 Purpose and scope.
178.801 General requirements.
178.802 Preparation of fiberboard IBCs for testing.
178.803 Testing and certification of metallic IBCs.
178.804 Testing and certification of rigid plastic IBCs.
178.805 Testing and certification of composite IBCs.
178.806 Testing and certification of fiberboard IBCs.
178.807 Testing and certification of wooden IBCs.
178.808 Testing and certification of flexible IBCs.
178.810 Drop test.
178.811 Bottom lift test.
178.812 Top lift test.
178.813 Leakproofness test.
178.814 Hydrostatic pressure test.
178.815 Stacking test.
178.816 Topple test.
178.817 Righting test.
178.818 Tear test.
178.819 Vibration test.

Subpart O—Testing of Intermediate Bulk Containers

§ 178.800 Purpose and scope.

This subpart prescribes certain testing requirements for IBCs identified in subpart N of this part.

§ 178.801 General requirements.

(a) *General.* The test procedures prescribed in this subpart are intended to ensure that IBCs containing hazardous materials can withstand normal conditions of transportation and are considered minimum requirements. Each packaging must be manufactured and assembled so as to be capable of successfully passing the prescribed tests and of conforming to the requirements of § 173.24 of this subchapter at all times while in transportation.

(b) *Responsibility.* It is the responsibility of the packaging manufacturer and the person who offers

a hazardous material for transportation, to the extent that assembly functions including final closure are performed by the latter, to assure that each IBC is capable of passing the prescribed tests.

(c) *Definitions.* For the purpose of this subpart:

(1) *IBC design type* is defined by the design, size, material, thickness, manner of construction and means of filling and discharging, and may include various surface treatments.

(2) *Design qualification testing* is the performance of the drop, leakproofness, hydrostatic pressure, stacking, bottom and/or top lift, tear, topple, righting and vibration tests, as applicable, prescribed in this subpart, for each different IBC design type, at the start of production of that packaging.

(3) *Periodic design requalification test* is the performance of the applicable tests specified in paragraph (c)(2) of this section on an IBC design type in order to requalify the design for continued production at the frequency specified in paragraph (e) of this section.

(4) *Production inspection* is the inspection that must initially be conducted on each newly manufactured IBC.

(5) *Production testing* is the performance of the leakproofness test prescribed in § 178.813 of this subpart on each IBC intended to contain solids discharged by gravity or intended to contain liquids.

(6) *Periodic retest and inspection* is performance of the applicable test and inspections prescribed in § 180.352 of this subchapter on each IBC at the frequency specified in § 180.352 of this subchapter.

(7) *Different IBC design type* is one that differs from a previously qualified IBC design type in structural design, size, material of construction, wall thickness, or manner of construction, but does not include:

(i) A packaging which differs only in surface treatment; and

(ii) A rigid plastic IBC or the plastic inner receptacle of a composite IBC which differs only with regard to additives which conform to §§ 178.706(c), 178.707(c) or 178.710(c) of this part; or

(iii) A packaging which differs according to § 178.801(h).

(d) *Design qualification testing.* The packaging manufacturer shall achieve successful test results for the design qualification testing at the start of production of each different IBC design type.

(e) *Periodic design requalification testing.* (1) Periodic design requalification must be conducted on each qualified IBC design type if the manufacturer is to maintain authorization for continued production. The IBC manufacturer shall achieve successful test results for the periodic design requalification at sufficient frequency to ensure each packaging produced by the manufacturer is capable of passing the design qualification tests. Design requalification tests must be conducted at least once every 12 months.

(2) Changes in the frequency of design requalification testing specified in paragraph (e)(1) of this section are authorized if approved by the Associate Administrator for Hazardous Materials Safety. These requests must be based on:

(i) Detailed quality assurance programs (e.g., ISO 9000) that assure that proposed decreases in test frequency maintain the integrity of originally tested IBC design types; and

(ii) Demonstrations that each IBC produced is capable of withstanding higher standards (i.e., increased drop height, hydrostatic pressure, wall thickness, fabric weight, etc.).

(f) *Production testing and inspection.* (1) Production testing consists of the leakproofness test prescribed in § 178.813 and must be performed on each IBC intended to contain solids discharged by gravity or intended to contain liquids.

(2) Applicable inspection requirements in § 180.352 of this subchapter must be performed on each IBC initially after production.

(g) *Test samples.* The IBC manufacturer shall conduct the design qualification and periodic design requalification tests prescribed in this subpart using random samples of IBCs, according to the appropriate test section.

(h) *Selective testing of metallic, rigid plastic and composite IBCs.* Variations of up to 25 percent decreased in the outer dimensions of a tested IBC design type are permitted without further testing. In addition, the Associate Administrator for Hazardous Materials Safety may approve the selective testing of IBCs that differ only in minor respects from a tested IBC design type and which provide an equivalent or greater level of safety than the tested type.

(i) *Approval of equivalent packagings.* An IBC having standards different from those in subpart N of this part, or which is tested using methods other than those specified in this part, may be used if approved by the Associate Administrator for Hazardous Materials Safety. Such IBCs must be shown to be equally effective, and testing methods used must be equivalent.

(j) *Proof of compliance.* Notwithstanding the periodic design requalification testing intervals specified in paragraph (e) of this section, the Associate Administrator for Hazardous Materials Safety may at any time require demonstration of compliance by a manufacturer, through testing in accordance with this subpart, that packagings meet the requirements of this subpart. As required by the Associate Administrator for Hazardous Materials Safety, the manufacturer shall either:

(1) Conduct performance tests, or have tests conducted by an independent testing facility, in accordance with this subpart; or

(2) Make a sample IBC available to the Associate Administrator for Hazardous Materials Safety, or a designated representative, for testing in accordance with this subpart.

(k) *Coatings.* If an inner treatment or coating of a IBC is required for safety reasons, the manufacturer shall design the IBC so that the treatment or coating retains its protective properties even after withstanding the tests prescribed by this subpart.

(l) *Record retention.* (1) The IBC manufacturer shall keep records for the qualification of each IBC design type and for each periodic design requalification as specified in this part. Records must be maintained at each location where the IBC is manufactured and at each location where the IBC design qualification and periodic design requalification testing is performed. Records must be maintained for as long as IBCs are manufactured in accordance with each qualified design type and for at least 2.5 years thereafter. Records shall include specific IBC types tested, dates of tests, location of tests, test specifics and results (including drop heights, hydrostatic pressures, tear propagation length, etc.), name of person conducting the test, and name of person responsible for testing. Test reports for fiberboard and wooden IBC design types must include a technical description of the pallets used.

(2) The IBC owner shall keep records of periodic retests and initial and periodic inspections prescribed in § 180.352 of this subchapter. Records must include design types, dates, locations, packaging specifications, test specifics and results, and names or name of persons testing, for each packaging, and at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test;

(3) The manufacturer and owner of each IBC must make all records of design qualification tests, periodic

design requalification tests, and periodic retests and inspections, available for inspection by the Associate Administrator for Hazardous Materials Safety or a designated representative.

§ 178.802 Preparation of Fiberboard IBCs for testing.

(a) Fiberboard IBCs or composite IBCs with fiberboard outer packagings must be conditioned for at least 24 hours in an atmosphere maintained:

(1) At 50 percent ± 2% relative humidity, and at a temperature of 23°± 2°C (73°F +/−4°F); or

(2) At 65% ±2% relative humidity, and at a temperature of 20°± 2°C (68°F +/−4°F), or 27° ± 2°C (81 °F +/−4°F).

(b) Average values should fall within the limits in paragraph (a) of this section. Short-term fluctuations and measurement limitations may cause individual measurements to vary by up to ± 5% relative humidity without significant impairment of test reproducibility.

§ 178.803 Testing and certification of metallic IBCs.

One IBC of each metallic design type must withstand the applicable tests in the order presented in the following table:

Tests	See	Type of IBC	
		11A, 11B, 11N	21A, 21B, 21N, 31A, 31B, 31N
Bottom lift	178.811	Required [a]	Required.[a]
Top Lift	178.812	Required [a]	Required.[a]
Stacking	178.815	Required [b]	Required.[b]
Leakproofness	178.813	Not required	Required.
Hydrostatic pressure	178.814	Not required	Required.
Drop	178.810	Required	Required.
Vibration	178.819	Required	Required.

[a] When IBCs are designed for this method of handling.
[b] When IBCs are designed to be stacked.

§ 178.804 Testing and certification of rigid plastic IBCs.

One IBC of each rigid plastic design type must withstand the applicable tests in the order presented in the following table:

Tests	See	Type of IBCs	
		11H1, 11H2	21H1, 21H2, 31H1, 31H2
Bottom Lift	178.811	Required	Required.
Top Lift	178.812	Required [a]	Required.[a]
Stacking	178.815	Required [b]	Required.[b]
Leakproofness	178.813	Not required	Required.
Hydrostatic pressure	178.814	Not required	Required.
Drop	178.810	Required	Required.
Vibration	178.819	Required	Required.

[a] When IBCs are designed to be lifted from the top.
[b] When IBCs are designed to be stacked.

§ 178.805 Testing and certification of composite IBCs.

One IBC of each composite design type must withstand the applicable tests in the order presented in the following table:

Tests	See	Type of IBCs	
		11HZ1, 11Hz2	21HZ1, 21HZ2, 31HZ1, 31HZ2
Bottom lift	178.811	Required	Required.
Top lift	178.812	Required [a]	Required.[a]
Stacking	178.815	Required [b]	Required.[b]
Leakproofness	178.813	Not required	Required.
Hydrostatic pressure	178.814	Not required	Required.
Drop	178.810	Required	Required.
Vibration	178.819	Required	Required.

[a] When IBCs are designed to be lifted from the top.
[b] When IBCs are designed to be stacked.

§ 178.806 Testing and certification of fiberboard IBCs.

One IBC of each fiberboard design type must withstand the applicable tests in the order presented in the following table:

Test	See	11G
Bottom lift	178.811	Required.
Stacking	178.815	Required.[a]

Test	See	11G
Drop	178.810	Required.
Vibration	178.819	Required.

* when IBCs are designed to be stacked.

§ 178.807 Testing and certification of wooden IBCs.

One IBC of each wooden design type must withstand the applicable tests in the order presented in the following table:

Test	See	11C, 11D, 11F
Bottom lift	178.811	Required.
Stacking	178.815	Required.*
Drop	178.810	Required.
Vibration	178.819	Required.

* when IBCs are designed to be stacked.

§ 178.808 Testing and certification of flexible IBCs.

One IBC of each rigid plastic design type must withstand the applicable tests in the order presented in the following table.

Tests	See
Top lift [1]	178.812
Tear	178.818
Stacking	178.815
Drop	178.810
Topple	178.816
Righting [1]	178.817
Vibration	178.819

[1] when IBCs are designed to be lifted from the top or the side.

§ 178.810 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all IBC design types and performed periodically as specified in § 178.801.

(b) *Special preparation for the drop test.* (1) Metallic, rigid plastic, and composite IBCs intended to contain solids must be filled to not less than 95% of their capacity or if intended to contain liquids to not less than 98% of their capacity. Pressure relief devices should be removed and their apertures plugged or rendered inoperative.

(2) Fiberboard, wooden, and flexible IBCs must be filled with a solid material to not less than 95% of their capacity.

(3) Testing of rigid plastic and composite IBCs must be carried out when the temperature of the packaging and its contents have been reduced to −18 °C (0 °F) or lower. Test liquids shall be kept in the liquid state by the addition of anti-freeze, if necessary.

(c) *Test method.* Samples of all IBC design types must be dropped onto a rigid, non-resilient, smooth, flat and horizontal surface. The point of impact must be the most vulnerable part of the base of the IBC being tested.

(d) *Drop height.* (1) For all IBCs, drop heights are specified as follows:

(i) Packing Group II: 1.2 m (3.9 feet).

(ii) Packing Group III: 0.8 m (2.6 feet).

(2) Drop tests are to be performed with the solid or liquid to be transported or with a non-hazardous material having essentially the same physical characteristics.

(3) The relative density and viscosity of a substituted non-hazardous material used in the drop test for liquids must be similar to the hazardous material intended for transportation. Water also may be used for the liquid drop test under the following conditions:

(i) Where the substances to be carried have a relative density not exceeding 1.2, the drop heights must be those specified in paragraph (d)(1) of this section for each IBC design type; and

(ii) Where the substances to be carried have a relative density exceeding 1.2, the drop heights must be those specified in paragraph (d)(1) of this section for each IBC design type, multiplied by the ratio of the relative density of the hazardous material to be transported, rounded off to the first decimal, to 1.2 (i.e. relative density/1.2 × specified drop height).

(e) *Criteria for passing the test.* (1) For all IBC design types except flexible IBC design types, no loss of contents. A slight discharge from a closure upon impact is not considered to be a failure of the IBC provided that no further leakage occurs.

(2) For flexible IBC design types, no loss of contents. A slight discharge (e.g., from closures or stitch holes), upon impact is not considered a failure of the flexible IBC provided that no further leakage occurs after the IBC has been raised clear of the ground.

§ 178.811 Bottom lift test.

(a) *General.* The bottom lift test must be conducted for the qualification of all IBC design types designed to be lifted from the base.

(b) *Special preparation for the bottom lift test.* The IBC must be loaded to 1.25 times its maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* All IBC design types must be raised and lowered twice by a lift truck with the forks centrally positioned and spaced at three quarters of the dimension of the side of entry (unless the points of entry are fixed). The forks must penetrate to three quarters of the direction of entry. The test must be repeated from each possible direction of entry.

(d) *Criteria for passing the test.* No permanent deformation which renders the IBC unsafe for transportation and no loss of contents.

§ 178.812 Top lift test.

(a) *General.* The top lift test must be conducted for the qualification of all IBC design types designed to be lifted from the top.

(b) *Special preparation for the top lift test.* (1) Metallic, rigid plastic and composite IBC design types must be loaded to twice the maximum permissible gross mass.

(2) Flexible IBC design types must be filled to six times the maximum permissible load, the load being evenly distributed.

(c) *Test method.* (1) A metallic or flexible IBC must be lifted in the manner for which it is designed until clear of the floor and maintained in that position for a period of five minutes. For flexible IBC design types, other methods of top lift testing and preparation at least equally effective may be used.

(2) Rigid plastic and composite IBC design types must be:

(i) Lifted by each pair of diagonally opposite lifting devices, so that the hoisting forces are applied vertically, for a period of five minutes; and

(ii) Lifted by each pair of diagonally opposite lifting devices, so that the hoisting forces are applied towards the center at 45° to the vertical, for a period of five minutes.

(d) *Criteria for passing the test.* No permanent deformation which renders the IBC, including the base pallets when applicable, unsafe for transportation, and no loss of contents.

§ 178.813 Leakproofness test.

(a) *General.* The leakproofness test must be conducted for the qualification of all IBC design types and on all production units intended to contain liquids or intended to contain solids that are loaded or discharged under pressure.

(b) *Special preparation for the leakproofness test.* Vented closures must either be replaced by similar non-vented closures or the vent should be sealed. For metallic IBC design types, the initial test must be carried out before the fitting of any thermal insulation equipment.

(c) *Test method and pressure applied.* The test must be carried out for a period of at least 10 minutes using air at a gauge pressure of not less than 20k Pa (2.9 psig). Leakproofness of IBC design types must be determined by coating the seams and joints with a heavy oil, a soap solution and water, or other

methods suitable for the purpose of detecting leaks. Other methods, at least equally effective, may be used in accordance with Appendix B of this part or if approved by the Associate Administrator for Hazardous Materials Safety.

(d) *Criterion for passing the test.* No leakage of air.

§ 178.814 Hydrostatic pressure test.

(a) *General.* The hydrostatic pressure test must be conducted for the qualification of all metallic, rigid plastic, and composite IBC design types intended to contain liquids or intended to contain solids loaded or discharged under pressure.

(b) *Special preparation for the hydrostatic pressure test.* For metallic IBCs, the test must be carried out before the fitting of any thermal insulation equipment. For all IBCs, pressure relief devices should be removed and their apertures plugged, or should be rendered inoperative.

(c) *Test method.* The test must be carried out for a period of a least 10 minutes applying a hydraulic pressure not less than that indicated in paragraph (d) of this section. The IBCs must not be mechanically restrained during the test.

(d) *Pressure applied.* (1) For metallic IBC design types, 31A, 31B, 31N: 65 kPa (9.4 psig).

(2) For metallic IBC design types 21A, 21B, 21N, 31A, 31B, 31N: 200 kPa (29 psig) gauge pressure (for metallic design types 31A, 31B, and 31N, the tests in paragraphs (d)(1) and (d)(2) of this section must be conducted consecutively).

(3) For rigid plastic IBC design types 21H1 and 21H2 and composite IBC design types 21HZ1 and 21HZ2: 75 kPa (11 psig).

(4) For rigid plastic IBC design types 31H1 and 31H2 and composite IBC design types 31HZ1 and 31HZ2: whichever is the greater of:

(i) The total gauge pressure measured in the IBC (i.e., the vapor pressure of the filling substance and the partial pressure of the air or other inert gases, minus 100 kPa (14.5 psig)) at 55°C (131°F) multiplied by a safety factor of 1.5. This total gauge pressure should be determined on the basis of a maximum degree of filling in accordance with § 173.35(d) of this subchapter and a filling temperature of 15°C (60°F);

(ii) 1.75 times the vapor pressure at 50°C (122°F) of the substance to be transported minus 100 kPa (14.5 psig), but with a minimum test pressure of 100 kPa;

(iii) 1.5 times the vapor pressure at 55°C (131°F) of the substance to be transported minus 100 kPa (14.5 psig), but with a minimum test pressure of 100 kPa; or

(iv) Twice the static pressure of the substance to be transported, with a minimum of twice the static pressure of water.

(e) *Criteria for passing the test.* (1) For metallic IBCs, subjected to the 65 kPa (9.4 psig) test pressure specified in paragraph (d)(1) of this section: no leakage or permanent deformation which renders the IBC unsafe for transport.

(2) For metallic IBCs intended to contain liquids, when subjected to the 200 kPa (29 psig) test pressure specified in paragraph (d)(2) of this section: no leakage.

(3) For rigid plastic IBC types 21H1, 21H2, 31H1 and 31H2 and composite IBC types 21HZ1, 21HZ2, 31HZ1 and 31HZ2: no permanent deformation which renders the IBC unsafe for transport and no leakage.

§ 178.815 Stacking test.

(a) *General.* The stacking test must be conducted for the qualification of all IBC design types intended to be stacked.

(b) *Special preparation for the stacking test.* (1) All IBCs except flexible IBC design types must be loaded to their maximum permissible gross mass.

(2) The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, with the load being evenly distributed.

(c) *Test method.* (1) All IBCs must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load for a period of at least five minutes (see paragraph (d) of this section).

(2) Fiberboard, wooden, rigid plastic, and composite IBCs must be subjected to the test for 24 hours.

(3) Rigid plastic IBC types 11H2, 21H2, 31H2 and composite IBC types 11HZ2, 21HZ2, and 31HZ2 must be subjected to the test for 28 days at 40°C (104°F).

(4) For all IBCs, the load must be applied by one of the following methods:

(i) One or more IBCs of the same type loaded to their maximum permissible gross mass and stacked on the test IBC; or

(ii) Appropriate weights loaded on either a flat plate or a reproduction of the base of the IBC, which is stacked on the test IBC

(d) *Calculation of superimposed test load.* For all IBCs, the load to be placed on the IBC must be 1.8 times the combined maximum permissible gross mass of the number of similar IBCs that may be stacked on top of the IBC during transportation.

(e) *Criteria for passing the test.* (1) For metallic, rigid plastic, and flexible IBCs: No permanent deformation which renders the IBC unsafe for transport and no loss of contents.

(2) For composite, fiberboard, and wooden IBCs: No permanent deformation which renders the whole IBC including the base pallet unsafe for transport and no loss of contents.

§ 178.816 Topple Test

(a) *General.* The topple test must be conducted for the qualification of all flexible IBC design types as a design type qualification test.

(b) *Special preparation for the topple test.* The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, with the load being evenly distributed.

(c) *Test method.* A flexible IBC must be toppled onto any part of its top upon a rigid, non-resilient, smooth, flat, and horizontal surface.

(d) *Topple height.* The topple height is specified as follows:

(1) Packing Group II: 1.2 m (3.9 feet).

(2) Packing Group III: 0.8 m (2.6 feet).

(e) *Criteria for passing the test.* No loss of contents. A slight discharge (e.g., from closures or stitch holes) upon impact is not considered to be a failure, provided no further leakage occurs.

§ 178.817 Righting test.

(a) *General.* The righting test must be conducted for the qualification of all flexible IBCs designed to be lifted from the top or side.

(b) *Special preparation for the righting test.* The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, with the load being evenly distributed.

(c) *Test method.* The flexible IBC, lying on its side, must be lifted at a speed of at least 0.1 m/s (0.33 ft/s) to an upright position, clear of the floor, by one lifting device or by two lifting devices when four are provided.

(d) *Criterion for passing the test.* No damage to the IBC or its lifting devices which renders the IBC unsafe for transportation or handling.

§ 178.818 Tear test.

(a) *General.* The tear test must be conducted for the qualification of all flexible IBC design types.

(b) *Special preparation for the tear test.* The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, the load being evenly distributed.

(c) *Test method.* Once the IBC is placed on the ground, a 100 mm (4 inch)

knife score, completely penetrating the wall of a wide face, is made at a 45° angle to the principal axis of the IBC, halfway between the bottom surface and the top level of the contents. The IBC must then be subjected to a uniformly distributed superimposed load equivalent to twice the maximum permissible load. The load is applied for at least five minutes. An IBC which is designed to be lifted from the top or the side must, after removal of the superimposed load, be lifted clear of the floor and maintained in that position for a period of five minutes.

(d) *Criterion for passing the test.* The IBC passes if the cut does not propagate more than 25% of its original length.

§ 178.819 Vibration test.

(a) *General.* The vibration test must be conducted for the qualification of all IBC design types.

(b) *Test method.* (1) A sample IBC, selected at random, must be filled and closed as for shipment.

(2) The sample IBC must be placed on a vibrating platform that has a vertical double-amplitude (peak-to-peak displacement) of one inch. The IBC should be constrained horizontally to prevent them from falling off the platform, but must be left free to move vertically, bounce and rotate.

(3) The test must be performed for one hour at a frequency that causes the package to be raised from the vibrating platform to such a degree that a piece of material of approximately 1.6 mm (0.063 inch) thickness (such as steel strapping or paperboard) can be passed between the bottom of any IBC and the platform.

(4) Immediately following the period of vibration, each IBC must be removed from the platform, turned on its side and observed for any evidence of leakage.

(5) Other methods, at least equally effective, may be used, if approved by the Associate Administrator for Hazardous Materials Safety.

(c) *Criteria for passing the test.* An IBC passes the vibration test if there is no rupture or leakage from any of the packages.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

19. The authority citation for Part 180 would continue to read as follows:

Authority: 49 U.S.C. App. 1803; 49 CFR part 1.

20. A new Subpart D would be added to Part 180 to read as follows:

Subpart D—Qualification and Maintenance of Portable Tanks and Intermediate Bulk Containers

Sec.
180.350 Applicability.
180.351 Qualification of IBCs.
180.352 Requirements for retest and inspection of IBCs.

Subpart D—Qualification and Maintenance of Portable Tanks and Intermediate Bulk Containers

§ 180.350 Applicability.

This section prescribes requirements, in addition to those contained in parts 107, 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic retesting of an IBC.

§ 180.351 Qualification of IBCs.

(a) *General.* Each IBC used for the transport of hazardous materials must be an authorized packaging.

(b) *IBC specifications.* To qualify as an authorized packaging, each IBC must conform to this subpart, the applicable requirements specified in part 173 of this subchapter, and the applicable requirements of subparts N and O of part 178 of this subchapter.

(c) *Five-year limit.* Rigid plastic IBCs may not be used in hazardous materials service for more than five years. A plastic inner receptacle of a composite IBC used in hazardous materials service for five years must be replaced with a receptacle identical to the original design type, or the entire composite packaging must be removed from hazardous materials service.

§ 180.352 Requirements for retest and inspection of IBCs.

(a) *General.* Each IBC constructed in accordance with a UN standard for which a test or inspection specified in this section is required may not be filled and offered for shipment until the test or inspection has been successfully completed. This paragraph does not apply to any IBC filled prior to the test or inspection due date. The requirements in this section do not apply to Specification 56 and 57 portable tanks.

(b) *Test and inspections.* Each metallic, rigid plastic, and composite IBC is subject to the following test and inspections:

(1) The leakproofness test prescribed in § 178.813 of this subchapter must be conducted every 2.5 years from the date of manufacture on each IBC intended for liquids or for solids loaded or discharged by pressure.

(2) An external visual inspection must be conducted initially after production and very 2.5 years from date of manufacture on each IBC to ensure that:

(i) The IBC is marked in accordance with requirements in § 178.703 of this subchapter. Missing or damaged markings, or markings difficult to read must be applied or returned to original condition;

(ii) Service equipment is fully functional and free from damage which may cause failure. Missing, broken, or damaged parts must be repaired or replaced;

(iii) The IBC, including the outer packaging if applicable, is free from damage which reduces its structural integrity. The IBC must be externally inspected for cracks, warpage and corrosion or any other damage which might render the IBC unsafe for transportation. An IBC found with such defects must be removed from service. If possible, the inner receptacle of a composite IBC must be removed from the outer frame for inspections. Defective inner receptacles may be replaced with a receptacle meeting the original design type. For metallic IBCs, thermal insulation must be removed only to the extent necessary for proper examination of the IBC body.

(3) Each metallic IBC must be internally inspected every five years to ensure that the IBC is free from damage which reduces its structural integrity.

(i) The IBC must be internally inspected for cracks, warpage, and corrosion or any other defect which might render the IBC unsafe for transportation. An IBC found with such defects must be removed from hazardous materials service.

(ii) Metallic IBCs must be checked to insure the minimum wall thickness requirements in § 178.705(c)(1)(iv)(A) of this subchapter are met. Metallic IBCs not complying with minimum wall thickness requirements must be removed from hazardous materials service.

(c) *Visual inspection.* Each flexible, fiberboard, or wooden IBC must be visually inspected to ensure that:

(1) The IBC is marked in accordance with requirements in § 178.703 of this subchapter. Additional marking allowed for each design type may be present. Required markings which are missing, damaged or difficult to read must be applied or returned to original condition.

(2) Proper construction and design specifications have been met.

(i) Each flexible IBC must be inspected to ensure that:

(A) Lifting straps if used, are securely fastened to the IBC in accordance with the design type;

(B) Seams are free from defects in stitching, heat sealing or gluing which would render the IBC unsafe for transport of hazardous materials. All stitched seam-ends must be secure; and

(C) Fabric used to construct the IBCs is free from cuts, tears and punctures. Additionally, fabric must be free form scoring which may render the IBC unsafe for transport.

(ii) Each fiberboard IBC must be inspected to ensure that:

(A) Fluting or corrugated fiberboard is firmly glued to facings;

(B) Seams are creased and free from scoring, cut, and scratches; and

(C) Joints are appropriately overlapped and glued, stitched, taped, or stapled as prescribed by the design. Where staples are used, the joints must be inspected for protruding staple-ends which could puncture or abrade the inner liner. All such ends must be protected before the IBC is authorized for hazardous materials service.

(iii) Each wooden IBC must be inspected to ensure that:

(A) End joints are secured in the manner prescribed by the design; and

(B) IBC walls are free from defects in wood. Inner protrusions which could puncture or abrade the liner must be covered.

(3) Flexible, fiberboard and wooden IBCs are prohibited from reuse.

(d) *Retest date.* The date of the most recent periodic retest must be marked on the IBC, on or near the certification plate.

(e) *Exceptions.* The requirements in this section do not apply to Specification 56 and 57 portable tanks.

(f) *Record retention.* The IBC owner shall keep records of periodic retests and initial and periodic inspections. Records must include design types, dates, locations, packaging specifications, test specifics and results, and names or name of persons testing, for each packaging, and at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test.

Issued in Washington, DC on July 22, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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Part III

Department of Education

34 CFR Part 400, et al.

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428

RIN 1830–AA08

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations governing three State-administered programs and 23 discretionary programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act (Act), Public Law 101–392, 104 Stat. 753 (1990). These regulations explain the types of activities that the Secretary may support under each program, and the basis on which the Secretary would make awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue, SW., Washington, DC 20202–7120. Telephone: (202) 205–8237. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, which were enacted on September 25, 1990, amend the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)). Furthermore, amendments to the Act were made by Public Law 102–103, 105 Stat. 497 (1991). The Act authorizes Federal assistance for vocational education through fiscal year (FY) 1995.

The Act redirects Federal assistance for vocational education in order to focus the Federal funds on improving vocational education and, in particular, on improving vocational education and services for members of special populations, including disabled and disadvantaged individuals. Under the Act, a State must make broad assurances that members of the special populations will be given equal access to vocational education. In addition, an eligible recipient under Title II of the Act must make broad assurances that members of special populations will receive supplementary and other services necessary to succeed in the vocational education projects, services, and activities assisted with funds awarded under the State plan, and must give priority for assistance to limited numbers of sites or program areas that serve the highest concentrations of members of special populations. Subject to the requirements for services to members of special populations and to certain requirements for the distribution of funds, the State and its eligible recipients share increased authority to direct the use of the funds awarded under the Act to improve their vocational education programs. In exchange for this increased flexibility, the Act imposes new requirements on both a State and its eligible recipients, making them accountable for improving vocational education. Specifically, a State is required to assess the quality of its vocational education program using measurable objective criteria during each State plan cycle. Furthermore, a State is required to develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs. Using these statewide standards and measures, a recipient of funds under Title II, Part C of Act must annually evaluate the effectiveness of its projects, services, and activities receiving assistance under a basic program or a special program listed in § 403.60 or § 403.130, respectively, unless the State determines that only a broader evaluation will be effective. In cases where substantial progress is not made toward meeting these standards and measures, the recipient must implement a local program improvement plan, and, if that is not successful, a State and local joint plan for improvement.

The Secretary strongly supports increased flexibility for State and local recipients in exchange for increased accountability. "AMERICA 2000, An Educational Strategy," which was announced by the President on April 18, 1991, emphasizes the need for better and more accountable schools as well as the need to provide opportunities for adults to continue learning. Clearly, these needed improvements must be implemented by the States and local recipients. Also consistent with promoting accountability in education is the Secretary's goal to conduct evaluations of all Federal grant programs, to the extent resources permit. To conduct these evaluations, the Secretary will collect uniform data from grantees about project results.

Vocational education must play a crucial role in achieving the six national goals for educational improvement underlying the AMERICA 2000 strategy. Vocational education must be improved and made more accessible for members of special populations in order for this Nation to achieve the goal of ensuring that every adult American will possess the knowledge and skills necessary to compete in a global economy (Goal 5). Moreover, improvements in vocational education can contribute to the Nation's achievement of a high school graduation rate of at least 90 percent by the year 2000 (Goal 2). Increased integration of vocational and academic education can contribute to the national goals of producing students that demonstrate competency in challenging subject matter, including English, mathematics, science, history, and geography (Goal 3) and students who lead the world in mathematics and science achievement (Goal 4).

The Act reflects many amendments that will assist States and local recipients in improving their vocational education programs.

Analysis of Comments and Changes

On October 11, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for the State Vocational and Applied Technology Education Programs and the National Discretionary Programs of Vocational Education in the **Federal Register** (56 FR 51448). In response to the Secretary's invitation in the NPRM, the Department received 808 letters commenting on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as appendix A to these final regulations.

A summary of the significant changes in the regulations since publication of the NPRM follows. The changes are described in the order that they appear in the regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

The following significant changes have been made to the regulations:

(a) *Definitions.*

(1) *Coherent sequence of courses.* The definition of "coherent sequence of courses" in § 400.4(b) has been revised to include sequential units encompassed within a single adult training or retraining course that otherwise meets the requirements of the definition. The Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act—including competency-based adult training and retraining, which are invariably conducted as single courses.

(2) *Economically disadvantaged family or individual.* The definition of "economically disadvantaged family or individual" in § 400.4(b) has been modified to include an individual who receives a Pell grant or assistance under a comparable State program of need-based financial assistance, or who is eligible to participate in programs assisted under Title II of the Job Training Partnership Act. Additionally, the phrase "or the Health and Human Services (HHS) Poverty Guidelines" has been added to paragraph (3) of the definition of "economically disadvantaged family or individual" following the reference to the Department of Commerce. The Secretary believes that receipt of a Pell grant or comparable State assistance, eligibility under Title II of the Job Training Partnership Act, and eligibility based on data from the HHS Poverty Guidelines are indices that would be representative of the economic status of students attending vocational education programs. These indices have been included in the regulations so that a case-by-case determination under paragraph (4) of the definition is not required prior to using them. A conforming change has been made to § 403.114(a).

(b) *Reporting requirements.* As part of the Department's increased efforts to reduce regulatory burden, § 400.10(b)(1) has been revised to require that recipients of grants and cooperative agreements under parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 must submit project performance reports to the Department at least semi-annually, rather than quarterly. A new paragraph (c) has been added to § 400.10 to clarify that recipients of State-administered grants under parts 403, 406, and 407 are only required to submit annual performance and financial reports to the Department. While the Secretary recognizes that reducing the reporting requirement from a quarterly reporting requirement to an annual reporting requirement would reduce paperwork burden for grantees even further, the Secretary believes that, for many of the discretionary programs funded under the Act, requiring grantees to report to the Department more frequently than once a year is essential to the Secretary's ability to provide adequate stewardship over the Federal funds awarded.

(c) *State councils on Vocational Education.*

(1) *Independence of State councils.* The clause containing the requirement that the State Council on Vocational Education perform its functions independently has been deleted from § 403.19(c)(1)(ii). The Secretary has added a new paragraph (3) to § 403.19(c), which provides that in carrying out any of its functions, whether carried out directly by council personnel or by way of one or more contracts for services, a State council must carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. This provision has been revised to more accurately reflect the requirement in section 112(e) of the Act that a State council must carry out all of its functions independent of programmatic and administrative control by other State boards, agencies, and individuals.

(2) *Release of grant awards to State councils.* The Secretary has revised § 403.50(b)(2) so as to provide specifically that a State council on vocational education that otherwise has complied with all applicable requirements and has submitted its annual budget will be eligible to receive its grant award for the following year once the Secretary has determined that the State plan is in substantially approvable form. The Secretary does not think that Congress intended the statutory provisions providing for an allotment to a State council to result in the undermining of the council's objectivity and autonomy or to result in providing a reward to a State council for failing conscientiously and effectively to fulfill its advisory role. Because the Secretary believes that Congress intended each State council to assist the State board in the development of a high quality State plan in an objective and effective manner, the Secretary views a grant award to a State council as being authorized at the point at which: (1) There is no further compliance activity required on the part of the council, and (2) the State plan is in substantially approvable form.

(d) *Special populations.*

(1) *Services in addition to supplementary services.* The Secretary has clarified that the requirement in § 403.111(a)(2)(i) to provide services other than supplementary services to members of special populations refers to the other services required by section 118(c) of the Act. Although the requirement for services in addition to supplementary services was recommended by the negotiators during the negotiated rulemaking, the Secretary believes that clarification of that requirement is necessary to make clear that the types of services that an eligible recipient must provide with funds awarded under Title II, Part C of the Act in addition to supplementary services are described in section 118(c) of the Act. Numerous commenters objected to the requirement to provide "other" services on the grounds that it would create an ambiguous, open-end requirement and an unwarranted burden.

(2) *Equitable participation.* Section 403.111(c)(3) has been changed to clarify that "equitable participation" means providing members of special populations with an opportunity to enter vocational education that is equal to that afforded to the general student population. This interpretation, which was added to the regulations in response to requests from numerous commenters, is similar to the one included in the draft regulations submitted to negotiated rulemaking. However, the revised regulations clarify the distinction in the Act concerning the requirement to provide an opportunity to members of special populations to enter a vocational education program as opposed to the requirement to provide the services necessary to enable members of special populations to participate fully and successfully in a vocational program.

(3) *State plan assurances.* A new § 403.188 has been added to clarify that a State's financial responsibility to serve members of special populations under the assurances in section 118(a) of the Act and § 403.32(a) (18) through (26) is not unlimited, and that a State is required to spend only funds awarded under the Act to satisfy these requirements, unless it is required by other applicable laws to spend non-Federal funds.

Equal access required by the assurances made pursuant to § 403.32(a) (18) through (19) means providing members of special populations with the opportunity to enter vocational education that is equal to the opportunity provided to general population students. The Secretary does not believe that it is possible or appropriate to limit application of the assurances of equal access to students

in specific projects, services, and activities that are funded under the Act. To do so would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for members of special populations. However, the Secretary does not believe the Act creates new civil rights or individual entitlements to particular services for members of special populations, nor does the Secretary believe that the Act creates an unlimited financial responsibility for a State to serve special population students.

(4) *Assurances in the local application.* Section 403.190(b) has been changed to clarify that the assurances to provide services to members of special populations apply only to an eligible recipient's projects that are assisted with grant funds awarded under the basic and special programs—not to every project assisted under Title III of the Act. Both the basic programs under Title II of the Act, which are listed in § 403.60, and the so-called "special programs" under Title III of the Act, which are listed in § 403.130, are subject to the requirements of the State plan. While section 118(c) of the Act is clear that only recipients of funds awarded under Title II of the Act are required to make the assurances related to members of special populations, section 118 of the Act is more broadly worded as to which special populations students must be served. Both the broad language of section 118(c) of the Act and the placement of the provisions in Title I of the Act which relates to State plan and other general requirements—rather than within Title II, Part C of the Act—support a broader interpretation of the scope of these assurances. The scope of this requirement is consistent with the revision to the scope of the local evaluation required under section 117 of the Act.

(e) *Evaluation.*

(1) *Scope of the requirement.* Proposed § 403.191(a)(1) provided that a recipient of funds under Title II, Part C of the Act must evaluate annually the effectiveness of its entire vocational education program regardless of the source of funding. Sections 403.191 (a)(1), (c)(2), and (d) have been changed to indicate that a recipient of funds awarded under Title II, Part C of the Act must evaluate only the particular projects, services, and activities assisted under the basic programs in § 403.60, or the special programs in § 403.130, unless the State board determines under revised § 403.201(a)(3) that a broader evaluation is needed. Corresponding changes have been made to § 403.192(b)(1), regarding the requirement for a local improvement plan. Section 403.201(a)(3) has been changed to require a State board to determine whether a recipient of funds under Title II, Part C of the Act must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program in order to assess the effectiveness of those projects, services, and activities. Section 403.201(a)(4) has been added to require a State board to determine whether the entire local vocational education program—or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic or special program; and require a recipient to conduct an evaluation consistent with the State board's determination. These changes were made in response to numerous comments that the proposed requirement to evaluate a recipient's entire vocational program would impose undue burden on recipients. The Secretary notes that the change in the scope of the evaluation requirement is also in keeping with the Department's heightened efforts to reduce regulatory burden and increase flexibility for educators.

The Secretary wishes to emphasize that there are reasons why a State may decide to require a local evaluation that is broader in scope than the minimum required by § 403.191, as revised. A State has the flexibility and responsibility under revised § 403.201(a)(3) and (4) to require a broader evaluation. A State could determine that, because its recipients may use funds awarded under the Act jointly with State and local funds or for isolated costs such as equipment, the recipients cannot measure the impact of the Federal funds alone. A State also could determine, based on its particular needs and objectives and those of its recipients, that it is necessary to measure overall program improvement using the system of standards and measures developed under §§ 403.201 and 403.202 and not simply the impact of the funds awarded under the Act. In any instance in which a State decides that a broader evaluation is required under § 403.201(a)(3), a State is subject to the requirements of § 400.7(b).

In order to further reduce burden and increase flexibility, the Secretary encourages States to coordinate evaluation systems to eliminate duplication, so long as the statewide measures developed under the Act are addressed.

(2) *Sampling.* The Secretary has also reduced the burden of implementing the evaluation requirement by clarifying in § 403.191 that recipients may rely on representative samples in conducting the evaluation. Because there is a wide variety of the types of projects assisted under the basic or special programs, the populations participating, and the range in size of recipients, the regulations give recipients flexibility in using sampling. A recipient may choose, for example, to conduct an evaluation based on a representative sample of students, or of students in a particular grade, or of sites assisted under the Act. A recipient is not limited to sampling by these examples, and not all of these samples will result in reliable data for every eligible recipient. Therefore, § 403.191 gives a recipient the flexibility to determine which methods to employ as it is in the best position to know which methods are most feasible, cost effective, and reliable for it.

(3) *Use of funds.* In response to the confusion expressed by commenters, § 403.191(e) has been added to clarify that a recipient may use funds awarded under the Act to support the cost of the evaluation required in § 403.191, provided that all applicable requirements in the Act are met. In keeping with the goal of flexibility, and the Department's past practice of excluding the costs of evaluations from the costs of administration, if a recipient uses funds awarded under Title II, Part C of the Act for evaluation, the recipient is not required to count those costs as part of the five percent that a recipient may reserve for administration under section 235(c)(4) of the Act.

(f) *Tech-prep education program—Preparatory services.* A change has been made to § 406.3(b)(7) and elsewhere to indicate that preparatory services must be provided under tech-prep education programs for all populations.

Comments related to this provision make clear that the use of the term "preparatory services" in connection with tech-prep programs has created confusion. That term as defined in section 521(24) refers to services for "individuals who are not enrolled in vocational education programs" and includes services that are not applicable to students who are enrolled in vocational education programs, such as outreach and recruitment. Thus, the Secretary believes that the requirement to provide preparatory services to all "participants" under section 344(b)(7) of the Act is inconsistent with the

definition of "preparatory services" in section 521(24) of the Act, which includes only services appropriate for individuals not enrolled in vocational education. Item 182 of the Conference Report accompanying the Act indicates that the requirement to provide preparatory services to all participants originated in section 212(b)(6) of the Senate amendment as a requirement to provide pre-vocational programs that assist the participants in sections 223 and 242 of the Senate amendment, which included discrete populations such as the economically disadvantaged, criminal offenders, and single parents. (H.R. Rep. No. 660, 101st Cong., 2d Sess. 138 (1990).) The conferees agreed to make a conforming amendment to change "pre-vocational" to "preparatory" and, without explanation, changed "participants in sections 223 and 242" to "all participants." Based on the legislative history of the Act, the Secretary believes that Congress intended to require preparatory services related to tech-prep education for "all populations"—not all participants.

(g) *Competition for the National Center or Centers for Research in Vocational Education Program (National Center).* Section 413.20 has been revised to clarify that, while the Secretary holds two competitions for the National Center and judges applications according to the criteria in § 413.21 (for applied research and development activities) and § 413.22 (for dissemination and training activities), in accordance with section 404(a)(5) of the Act, the Secretary intends to give preference in grant selection to an institution or consortium of institutions that demonstrates the ability to carry out effectively both activities listed in section 404(a) of the Act and in § 413.3(a) and (b). Section 413.20(h) of the NPRM, which provided for the assignment of five preference points to certain applications, has been deleted. In lieu of preference points, provided for in the proposed regulations, new paragraphs (h) and (i) have been added to § 413.20 to explain the specific process by which the Secretary determines the ability of applicants to carry out both program activities effectively and by which the Secretary gives preference to the selection of a single grant recipient. Finally, a new paragraph (j) has been added to § 413.20 to clarify that, in the event that no applicant institution or consortium of institutions demonstrates to the Secretary its ability to carry out both activities effectively, the Secretary makes two grant awards to the applicants scoring the highest in each of the competitions.

The Secretary believes that these revisions to § 413.20 are responsive to the commenters' concerns, provide for an equitable and efficient competition that gives a strong preference to funding a single institution or consortium, and ensure that, if a single institution or consortium is indeed funded, it will have demonstrated the ability to carry out both program functions effectively and in accordance with the purposes of section 404 of the Act.

(h) *Bilingual Vocational Instructor Training Program.* Sections 428.1, 428.3(a)(1), 428.10(h), 428.21(a)(2), 428.21(b)(1)(i) and (iii), and 428.21(b)(2) have been revised to authorize the training of secondary vocational instructors in training projects supported under the Bilingual Vocational Instructor Training Program. As proposed, § 428.1 would have limited training under the Bilingual Vocational Instructor Training Program to personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. The proposed regulations were intended to reinforce the traditional link between the Bilingual Vocational Instructor Training Program and the Bilingual Vocational Training Program that is limited by law to training "limited English proficient out-of-school youth and adults." However, the Secretary has modified this approach because it had the disadvantage of slowing the pace with which secondary vocational education institutions might adopt the highly successful bilingual vocational training models developed under the Bilingual Vocational Instructor Training Program. It also had the disadvantage of giving local agencies and institutions less flexibility to use Federal funds to address locally defined educational needs.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Programs covered by 34 CFR parts 402, 403, 405, 406, 407, 408, 409, 412, 414, 415, 417, 421, 422, 423, 424, 425, 426, 427, and 428 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 400

Administrative practices and procedure, Education, Grant programs, and Vocational education.

34 CFR Parts 401, 410, and 425

Education, Indian education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 402, 407, 408, 409, 412, 415, and 423

Education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 403

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Manpower training programs, Minority groups, Prisoners, Private schools, Reporting and recordkeeping requirements, Schools, Vocational education, and Women.

34 CFR Parts 405 and 406

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Labor unions, Minority groups, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 411 and 413

Education, Education research, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 414

Education, Reporting and recordkeeping requirements, Telecommunications, and Vocational education.

34 CFR Parts 416, 417, 418, and 419

Education, Reporting and recordkeeping requirements, Scholarships and fellowships, and Vocational education.

34 CFR Parts 421 and 426

Education, Business and industry, Labor unions, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 422

Education, Prisoners, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 424

Education, Education of disadvantaged, Education of handicapped, Minority groups, Reporting and recordkeeping requirements, Vocational education, and Women.

34 CFR Parts 427 and 428

Bilingual education, Education, Reporting and recordkeeping requirements, and Vocational education.

Redesignation Table

In order to accommodate new programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, several part numbers in chapter IV of title 34 are redesignated. The following table lists old and new part numbers for all vocational education programs in chapter IV of title 34.

New 34 CFR Part Nos.	Title	Old 34 CFR Part Nos.
400	Vocational and Applied Technology Education—General Provisions.	400
401	Indian Vocational Education Program.	410
402	Native Hawaiian Vocational Education Program.	410
403	State Vocational and Applied Technology Education Program.	401
404	[Reserved]	
405	National Tech-Prep Education Program.	New
406	State-Administered Tech-Prep Education Program.	New
407	Supplementary State Grants Program.	New
408	Community Education Employment Centers Program.	New
409	Vocational Education Lighthouse Schools Program.	New
410	Tribally Controlled Postsecondary Vocational Institutions Program.	New
411	Vocational Education Research Program.	416
412	National Network for Curriculum Coordination in Vocational and Technical Education.	New
413	National Center or Centers for Research in Vocational EducationProgram.	417
414	Materials Development in Telecommunications Program.	New
415	Demonstration Centers for the Training of Dislocated Workers Program.	411
416	Vocational Education Training and Study Grants Program.	New
417	Vocational Education Leadership Development Awards Program.	New
418	Vocational Educator Training Fellowships Program.	New
419	Internships for Gifted and Talented Vocational Education Students Program.	New
420	[Reserved]	
421	Business and Education Standards Program.	New
422	Educational Programs for Federal Correctional Institutions.	New
423	Vocational Education Dropout Prevention Program.	New
424	Model Centers of Regional Training for Skilled Trades Program.	New
425	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	New
426	Cooperative Demonstration Programs.	412
427	Bilingual Vocational Training Program.	407
428	Bilingual Vocational Instructor Training Program.	408
429	Bilingual Materials, Methods, and Techniques Program.	409
430–444	[Reserved]	
445	Technology Education Demonstration Program.	445

Dated: August 6, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training Program), 84.101 (Indian and Hawaiian Natives Program), 84.174 (State Assistance for Vocational Education Support Programs by Community-Based Organizations), 84.193 (Demonstration Centers for the Training of Dislocated Workers), 84.199 (Cooperative Demonstration Programs), 84.243 (State-Administered Tech-Prep Education Program), 84.244 (Business and Education Standards Program), 84.245 (Tribally Controlled Postsecondary Vocational Institutions Program), 84.248 (Demonstration Projects for the Integration of Vocational and Academic Learning Program), and 84.253 (Supplementary State Grants Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for the National Tech-Prep Education Program, Community Education Employment Centers Program, Vocational Education Lighthouse Schools Program, Materials Development in Telecommunications Program, Vocational Education Training and Study Grants Program, Vocational Education Leadership Development Awards Program, Vocational Education Training Fellowships Program, Internships for Gifted and Talented Vocational Education Students Program, Educational Programs for Federal Correctional Institutions, Vocational Education Dropout Prevention Program, and Model Centers of Regional Training for Skilled Trades.)

Chapter IV of title 34 of the Code of Federal Regulations is amended as follows:

PART 409—[REDESIGNATED AS PART 429]

1. Part 409 is redesignated as part 429.

2. Part 400 is revised to read as follows:

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Sec.

400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

Sec.

400.2 What programs are governed by these regulations?
400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?
400.4 What definitions apply to the Vocational and Applied Technology Education Programs?
400.5 Under what conditions may funds under the Act be used for the joint funding of programs?
400.6 What are the requirements for establishing a State Committee of Practitioners?
400.7 What are the provisions governing the issuance of State core standards and measures of performance and State rules or regulations?
400.8 What are the provisions governing student assistance?
400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?
400.10 What are the reporting requirements?

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

(a) The purpose of the Vocational and Applied Technology Education Programs is to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population.

(b) The purpose will be achieved principally through concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society.

(Authority: 20 U.S.C. 2301)

§ 400.2 What programs are governed by these regulations?

The regulations in this part apply to the Vocational and Applied Technology Education Programs as follows:

(a) *State-administered programs.* (1) State Vocational and Applied Technology Education Program (34 CFR part 403).

(2) State-Administered Tech-Prep Education Program (34 CFR part 406).

(3) Supplementary State Grants Program (34 CFR part 407).

(b) *National discretionary programs.* (1) Indian Vocational Education Program (34 CFR part 401).

(2) Native Hawaiian Vocational Education Program (34 CFR part 402).

(3) National Tech-Prep Education Program (34 CFR part 405).

(4) Community Education Employment Centers Program (34 CFR part 408).

(5) Vocational Education Lighthouse Schools Program (34 CFR part 409).

(6) Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410).

(7) Vocational Education Research Program (34 CFR part 411).

(8) National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412).

(9) National Center or Centers for Research in Vocational Education (34 CFR part 413).

(10) Materials Development in Telecommunications Program (34 CFR part 414).

(11) Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415).

(12) Vocational Education Training and Study Grants Program (34 CFR part 416).

(13) Vocational Education Leadership Development Awards Program (34 CFR part 417).

(14) Vocational Educator Training Fellowships Program (34 CFR part 418).

(15) Internships for Gifted and Talented Vocational Education Students Program (34 CFR part 419).

(16) Business and Education Standards Program (34 CFR part 421).

(17) Educational Programs for Federal Correctional Institutions (34 CFR part 422).

(18) Vocational Education Dropout Prevention Program (34 CFR part 423).

(19) Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424).

(20) Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425).

(21) Cooperative Demonstration Programs (34 CFR part 426).

(22) Bilingual Vocational Training Program (34 CFR part 427).

(23) Bilingual Vocational Instructor Training Program (34 CFR part 428).

(24) Bilingual Materials, Methods, and Techniques Program (34 CFR part 429).

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

The following regulations apply to the Vocational and Applied Technology Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 401, 402, 405, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429 except that 34 CFR 75.720(b) does not apply to performance reports under parts 401, 402, 405, 408, 409, 412, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428, and to financial reports under parts 412 and 413).

(3) 34 CFR part 76 (State-Administered Programs) (applicable to parts 403, 406, and 407).

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) (not applicable to parts 401, 410, 411, 413, 418, and 419).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act— Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying) (not applicable to parts 401 and 410).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts under parts 401, 402, 411, 412, 426, 427, 428, and 429).

(c) The regulations in this part 400.

(d) The regulations in 34 CFR parts 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) *Definitions in EDGAR.* The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
EDGAR
Elementary school
Facilities
Federally recognized Indian tribal government
Fiscal year
Grant
Grantee

Grant period
Nonprofit
Private
Project
Public
Recipient
Secondary school
Secretary
State educational agency
Subgrant
Subgrantee
Supplies

(b) *Other definitions.* The following definitions also apply to the regulations for Vocational and Applied Technology Education Programs.

Act means the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*), as amended by Public Law 101–392, 104 Stat. 753 (1990), and Public Law 102–103, 105 Stat. 497 (1991), unless otherwise indicated.

Administration means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, or research activities.

All aspects of an industry includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry.

Americans with Disabilities Act of 1990 or *ADA* mean the Act in 42 U.S.C. 12101 *et seq.*

Apprenticeship training program means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act (29 U.S.C. 50), that is conducted or sponsored by an employer, a group of employers, or a joint apprenticeship committee representing both employers and a union, and that contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

Area vocational education school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in not less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college, community college, or university that operates under the policies of the State board and provides vocational education in not less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraph (3) of this definition or in this paragraph, it admits as regular students both individuals who have completed high school and individuals who have left high school.

Career guidance and counseling means programs that—

(1) Pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision-making, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Assist those individuals in making and implementing informed educational and occupational choices.

Chapter 1 means chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).

Coherent sequence of courses means a series of courses in which vocational and academic education are integrated, and which directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education, academic education, and adult training or retraining, including sequential units encompassed within a single adult retraining course, that otherwise meet the requirements of this definition.

Community-based organization means a private nonprofit organization of demonstrated effectiveness that is representative of communities or significant segments of communities and that provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, WAVE, Inc., Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973 (29 U.S.C. 706(10)), agencies serving youth, agencies serving individuals with disabilities, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and an organization of demonstrated effectiveness serving non-reservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Authority: 20 U.S.C. 2471(6); 41 U.S.C. 1503(5))

Construction includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

Cooperative education means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field. The two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

Criminal offender means any individual who is charged with, or convicted of, any criminal offense, including a youth offender or a juvenile offender.

Correctional institution means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

Curriculum materials means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field that is designed to strengthen the academic foundation and prepare individuals for employment at

the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

Disadvantaged refers to individuals (other than individuals with disabilities) who have economic or academic disadvantages and who require special services and assistance in order to enable these individuals to succeed in vocational education programs. This term includes individuals who are members of economically disadvantaged families, migrants, individuals of limited English proficiency, and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (on which the grade "A" equals 4.0), or who fails to attain minimum academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills; and

(3)(i) Has been dependent on public assistance or on the income of a relative but is no longer supported by that income;

(ii) Is a parent whose youngest dependent child will become ineligible to receive assistance under part A of Title IV of the Social Security Act (42 U.S.C. 601), Aid to Families with Dependent Children, within two years of the parent's application for assistance under the Carl D. Perkins Vocational and Applied Technology Education Act;

(iii) Is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iv) Is described in paragraphs (1) and (2) of this definition and is a criminal offender.

Economically disadvantaged family or individual means a family or individual that is—

(1) Eligible for any of the following:

(i) The program for Aid to Families with Dependent Children under part A of Title IV of the Social Security Act (42 U.S.C. 601).

(ii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iii) To be counted for purposes of section 1005 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2701).

(iv) The free or reduced-price meals program under the National School Lunch Act (42 U.S.C. 1751).

Note to paragraph (1)(iv): The National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in a free or reduced-priced meals program to determine eligibility for projects, services, and activities under the Vocational and Applied Technology Education Programs.

(v) Participation in programs assisted under Title II of the JTPA.

(2) In receipt of a Pell grant or assistance under a comparable State program of need-based financial assistance.

(3) Determined by the Secretary to be low-income according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

(4) Identified as low income according to other indices of economic status, including estimates of those indices, if a grantee demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(Authority: 20 U.S.C. 2341(d)(3))

Eligible recipient means, except as otherwise provided, a local educational agency, an area vocational education school, an intermediate educational agency, a postsecondary educational institution, a State corrections educational agency, or an eligible institution as defined in 34 CFR 403.117(a).

General occupational skills means strong experience in, and understanding of, all aspects of an industry.

High technology means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

IDEA means the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), formerly entitled "Education of the Handicapped Act."

Individual with disabilities means any individual with any disability (as defined in section 3(2) of the Americans With Disabilities Act of 1990), which includes any individual who—

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;

(2) Has a record of an impairment described in paragraph (1) of this definition; or

(3) Is regarded as having an impairment described in paragraph (1) of this definition.

Note: This definition necessarily includes any individual who has been evaluated under part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services; and any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

(Authority: 42 U.S.C. 12102(2))

Individualized education program means a written statement for a disabled individual developed in accordance with sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)).

Institution of higher education. (1) The term means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(ii) Is legally authorized within such State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the

accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) The term also includes—

(i) Any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1)(i), (ii), (iv), and (v) of this definition; and

(ii) A public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)).

(Authority: 20 U.S.C. 1141(a))

Intermediate educational agency means a combination of school districts or counties (those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties) as are recognized in a State as an administrative agency for that State's vocational or technical education schools or for vocational programs within its public elementary or secondary schools. This term includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(Authority: 20 U.S.C. 2891(5))

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Limited English proficiency, if used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who come from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3223(a)(1))

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. For the purposes of sections 114, 115, 116, 117, and 240 of the Act (implemented at 34 CFR 403.31 (e) and (f), 403.32(c)(3), 403.190, 403.191, 403.192, 403.201, 403.202, and 403.204), this term includes a State corrections educational agency.

Measure means a description of an outcome.

(Authority: H.R. Rep. No. 41, 101st Cong., 1st Sess. 13 (1989))

Postsecondary educational institution means an institution legally authorized to provide postsecondary education within a State, a Bureau of Indian Affairs-controlled postsecondary institution, or any postsecondary educational institution operated by, or on behalf of, any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the Act of April 16, 1934 (25 U.S.C. 452).

Preparatory services means services, programs, or activities designed to assist individuals who are not enrolled in vocational education programs in the selection of, or preparation for participation in, an appropriate vocational education training program. Preparatory services may include, but are not limited to—

(1) Services, programs, or activities related to outreach to, or recruitment of, potential vocational education students;

(2) Career counseling and personal counseling;

(3) Vocational assessment and testing; and

(4) Other appropriate services, programs, or activities.

Private vocational training institution means a business or trade school, or technical institution or other technical or vocational school, in any State, that—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) By a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category. The committee shall prescribe the standards of content, scope, and quality that must be met by those schools and shall also determine whether particular schools meet those standards.

Program effectiveness panel means the panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Program year or *academic year* mean the twelve-month period during which a State operates its vocational education program (which is most generally a period beginning on July 1 and ending on the following June 30).

(Authority: 20 U.S.C. 1225(a))

Rehabilitation Act of 1973 means the Act in 29 U.S.C. 701 *et seq.*

School facilities means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

Sequential course of study means an integrated series of courses that are directly related to the educational and occupational skills preparation of individuals for jobs, or preparation for postsecondary education.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has a minor child or children for which the parent has either custody or joint custody; or

(ii) Is pregnant.

Small business means a for-profit enterprise employing 500 or fewer employees.

Special populations refers to individuals with disabilities, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions.

Specific job training means training and education for skills required by an employer to provide the individual student with the ability to obtain employment and to adapt to the changing demands of the workplace.

Spread means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated.

Standard means the level or rate of an outcome.

(Authority: H.R. Rep. No. 41, 101st Cong., 1st Sess. 13 (1989))

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658 (48 U.S.C. 1681)).

State board means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State.

State corrections educational agency means the State agency or agencies responsible for carrying out corrections education programs in the State.

State council means the State council on vocational education established in accordance with 34 CFR 403.17 through 403.19.

Supplementary services means curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

Technology education means an applied discipline designed to promote technological literacy that provides knowledge and understanding of the impacts of technology including its organizations, techniques, tools, and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power, and energy.

Transportability means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

Tribally controlled community college means an institution that receives assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a).

Vocational education means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

Vocational student organizations means those organizations for individuals enrolled in vocational education programs that engage in activities as an integral part of the instructional program. These organizations may have State and national units that aggregate the work and purposes of instruction in vocational education at the local level.

Wagner-Peyser Act means the Act in 29 U.S.C. 49 *et seq.*

(Authority: 20 U.S.C. 2471)

§ 400.5 Under what conditions may funds under the Act be used for the joint funding of programs?

(a) Funds made available under the Act may be used to provide additional funds under any of the programs in—

(1) Title II, section 123 and Title III of the JTPA; or

(2) The Wagner-Peyser Act.

(b) Funds used to carry out paragraph (a) of this section may be used only if the—

(1) Program otherwise meets the requirements of the Act and the requirements of the programs in paragraph (a) (1) and (2) of this section;

(2) Program serves the same individuals that are served under the Act;

(3) Program provides services in a coordinated manner with services provided under the Act; and

(4) Funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(c) Funds that meet the conditions in paragraphs (a) and (b) of this section may be used as matching funds.

(Authority: 20 U.S.C. 2468)

§ 400.6 What are the requirements for establishing a State Committee of Practitioners?

(a) *Consultation.* A State shall appoint a State Committee of Practitioners (Committee) after consulting with—

(1) Local school officials representing eligible recipients;

(2) Representatives of—

(i) Organized labor;

(ii) Business;

(iii) Superintendents;

(iv) Community-based organizations;

(v) Private industry councils established under section 102(a) of the JTPA (29 U.S.C. 1512);

(vi) State councils;

(vii) Parents;

(viii) Special populations; and

(ix) Correctional institutions;

(3) The administrator appointed under 34 CFR 403.13(a);

(4) The State administrator of programs assisted under Part B of the IDEA;

(5) The State administrator of programs assisted under Chapter 1;

(6) The State administrator of programs for students of limited English proficiency; and

(7) Guidance counselors.

(b) *Committee selection.* The State shall select the Committee from nominees solicited from—

(1) State organizations representing school administrators;

(2) Teachers;

(3) Parents;

(4) Members of local boards of education; and

(5) Appropriate representatives of institutions of higher education.

(c)(1) *Committee membership.* The Committee must consist of—

(i) Representatives of local educational agencies, who must constitute a majority of the members of the committee;

(ii) School administrators;

(iii) Teachers;

(iv) Parents;

(v) Members of local boards of education;

(vi) Representatives of institutions of higher education; and

(vii) Students.

(2) School administrators, teachers, and members of local boards of education may be counted as representatives of LEAs for purposes of paragraph (c)(1)(i) of this section.

(Authority: 20 U.S.C. 2325 (a) and (d)(1); 2468a)

§ 400.7 What are the provisions governing the issuance of State core standards and measures of performance and State rules or regulations?

(a)(1) *State standards and measures.* A State shall convene, on a regular basis, the Committee established under § 400.6 to review, comment on, and propose revisions to a draft proposal that the State board develops for a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) The Committee shall make recommendations to the State board with respect to modifying statewide standards and measures based on information provided by the State under 34 CFR 403.201(d).

(b)(1) *State rules and regulations.* Except as provided in paragraph (b)(2) of this section, before a State publishes any proposed or final State rule or regulation for programs, services, or activities covered by the Act, the State shall convene the Committee for the purpose of reviewing the rule or regulation.

(2) In an emergency, in which a rule or regulation must be issued within a very limited time period to assist eligible recipients with the operation of projects, services, or activities, the State—

(i) May issue a proposed rule or regulation without meeting the requirements in paragraph (b)(1) of this section; but

(ii) Shall immediately convene the Committee to review the rule or regulation before it is issued in final form.

Cross-Reference: See § 400.9(c).

(3) If a State policy is binding on eligible recipients and has the same effect as a formal rule or regulation, although it is not issued as one, that policy is covered by this section.

(Authority: 20 U.S.C. 2325(a); 2468a)

§ 400.8 What are the provisions governing student assistance?

(a) The portion of any student financial assistance received under the Act that is made available for attendance costs described in paragraph (b) of this section may not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) For purposes of this section, attendance costs are —

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, including costs for rental or purchases of any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending an institution on at least a half-time basis, as determined by the institution.

(Authority: 20 U.S.C. 2466d)

§ 400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?

In addition to the Act, applicable Federal laws, and regulations, the following requirements apply to Vocational and Applied Technology Education Programs:

(a) A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the information system developed by the Secretary under section 421 of the Act.

(b) Nothing in the Act is to be construed to be inconsistent with applicable Federal laws guaranteeing civil rights, or is intended to, or has the effect of, limiting or diminishing any obligations imposed under the IDEA or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) Any State rule, regulation, or policy imposed on the administration or operation of programs funded under the Act, including any rule, regulation, or policy based on a State's interpretation of any Federal law, regulation, or guideline, must be identified as a State imposed requirement.

(d) Funds provided under the Act may not be used for the purpose of directly providing incentives or inducements to relocate a business or enterprise from one State to another State if the relocation would result in a reduction in the number of jobs available in the State where the business enterprise is located before the incentives or inducements are offered.

(e) A State may not take into consideration payments under the Act in determining for any educational agency or institution in that State the eligibility for State aid or the amount of State aid with respect to public education within the State.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2421, 2424, 2466c, 2468b, 2468c, and 2468e(a)(2))

§ 400.10 What are the reporting requirements?

(a) Recipients of grants and cooperative agreements shall report information about students, projects, evaluations, dissemination, expenditures, accomplishments, and any other information, as may be required by the Secretary.

(b) Recipients of grants and cooperative agreements under—

(1) Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 shall submit performance reports at least semi-annually;

(2) Part 412 shall submit monthly progress and financial status reports and an annual impact report; and

(3) Part 413 shall submit monthly exception reports and quarterly financial status reports.

(c) Recipients of grants under parts 403, 406, and 407 shall submit annual performance and financial reports.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2301 *et seq.*)

3. Part 401 is revised to read as follows:

PART 401—INDIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

401.1 What is the Indian Vocational Education Program?
401.2 Who is eligible for an award?
401.3 What activities may the Secretary fund?
401.4 What regulations apply?
401.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

401.10 How are applications submitted?

Subpart C—How Does the Secretary Make an Award?

401.20 How does the Secretary evaluate an application?
401.21 What selection criteria does the Secretary use?
401.22 What additional factors may the Secretary consider?

401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

Subpart D—What Conditions Must Be Met After an Award?

401.30 How do the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?

401.31 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(b), unless otherwise noted.

Subpart A—General

§ 401.1 What is the Indian Vocational Education Program?

The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians.

(Authority: 20 U.S.C. 2313(b))

§ 401.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) A tribal organization of any Indian tribe that is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) A Bureau-funded school offering a secondary program.

(b) Any tribal organization or Bureau-funded school described in paragraph (a) of this section may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(c)(1) A consortium shall enter into an agreement signed by all members of the consortium, and designating one member of the consortium as the applicant and grantee.

(2) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(3) The applicant shall submit the agreement with its application.

Cross-Reference: See 34 CFR 75.127–75.129—Group applications.

(Authority: 20 U.S.C. 2313(b))

§ 401.3 What activities may the Secretary fund?

(a) The Secretary provides financial assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the purposes of the Act. In the case of a grant to a Bureau-funded school, the Secretary provides a minimum grant of $35,000.

(b) Projects funded under this program are in addition to other programs, services, and activities made available under other provisions of the Act to—

(1) Eligible Indians in need of vocational education; and

(2) Eligible Indian tribes as community-based organizations that receive State vocational education assistance.

(c) An award under this program may be used to provide a stipend to a student who—

(1) Is enrolled in a vocational education project funded under this program; and

(2) Has an acute economic need that cannot be met through work-study programs.

(d) The amount of a stipend may be the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage set under the Fair Labor Standards Act. A stipend may not be paid for time a student is not in attendance in a project.

(Authority: 20 U.S.C. 2313(b) (1) and (3))

§ 401.4 What regulations apply?

The following regulations apply to the Indian Vocational Education Program:

(a) The regulations in 34 CFR part 400 (except that 34 CFR parts 79 and 82 do not apply to this program).

(b) The regulations in this part 401.

(Authority: 20 U.S.C. 2313(b))

§ 401.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Act of April 16, 1934 means the Federal law commonly known as the "Johnson-O'Malley Act" that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes (25 U.S.C. 455–457).

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Bureau-funded school means—

(1) A Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under sections 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 2019 (3), (4), and (5))

Indian means a person who is a member of an Indian tribe.

(Authority: 25 U.S.C. 450b(d))

Indian tribe means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b(e))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by that governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. However, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each of those Indian tribes must be a prerequisite to the letting or making of that contract or grant.

(Authority: 20 U.S.C. 2313(a)(1)(A), (b); 25 U.S.C. 450b(l))

Subpart B—How Does One Apply for an Award?

§ 401.10 How are applications submitted?

(a) An application from a tribal organization, other than a Bureau-funded school, must be submitted to the Secretary by the Indian tribe.

(b) An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(c) An application from a Bureau-funded school may be submitted directly to the Secretary.

(Authority: 20 U.S.C. 2313(b)(1); 25 U.S.C. 450b)

Subpart C—How Does the Secretary Make an Award?

§ 401.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 401.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 401.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 401.21, the Secretary awards—

(1) Up to 5 points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(2) Five points to applications from tribally controlled community colleges that—

(i) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(ii) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

(Authority: 20 U.S.C. 2313(b))

§ 401.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment, completion, and placement (including placement in jobs or military specialties and in continuing education or training opportunities) that are realistic in terms of stated needs, resources, and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

(i) Methods of participant selection.

(ii) Assessment and feedback of participant progress.

(iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.

(iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need.* (15 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population;

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30 through 403.34 is designed to meet those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements;

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement

of participants. The data must be broken down by sex and by occupation for which the training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities.* (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional educational or training opportunities that are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2313(b))

§ 401.22 What additional factors may the Secretary consider?

The Secretary may decide not to award a grant or cooperative agreement if—

(a) The proposed project duplicates an effort already being made; or

(b) Funding the project would create an inequitable distribution of funds under this part among Indian tribes.

(Authority: 20 U.S.C. 2313(b))

§ 401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 401.2(a)(1), an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Vocational and Adult Education to serve as a hearing officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 450f)

Subpart D—What Conditions Must Be Met After an Award?

§ 401.30 How do the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?

(a) Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f). These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part. Section 4 contains requirements pertaining to submission of an education plan by a contractor. Section 5 pertains to participation of parents of Indian children. Section 6 pertains to reimbursement for educating non-resident students.

(b) Grants to Bureau-funded schools are not subject to the requirements of the Indian Self-Determination Act or the Act of April 16, 1934.

(Authority: 20 U.S.C. 2313 (b)(1)(A)(ii)(I) and (II))

§ 401.31 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired;

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided;

(3) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(4) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(5) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic and vocational skills competencies.

(Approved by the Office of Management and Budget under Control Number 1830–0013)

(Authority: 20 U.S.C. 2313(b))

4. A new part 402 is added to read as follows:

PART 402—NATIVE HAWAIIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

402.1 What is the Native Hawaiian Vocational Education Program?
402.2 Who is eligible for an award?
402.3 What activities may the Secretary fund?
402.4 What regulations apply?
402.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

402.20 How does the Secretary evaluate an application?
402.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

402.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(c), unless otherwise noted.

Subpart A—General

§ 402.1 What is the Native Hawaiian Vocational Education Program?

The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.2 Who is eligible for an award?

Any organization that primarily serves and represents native Hawaiians and that is recognized by the Governor

of the State of Hawaii is eligible to apply for an award under this program.

(Authority: 20 U.S.C. 2313(c))

§ 402.3 What activities may the Secretary fund?

The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer programs, or portions of programs, that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.4 What regulations apply?

The following regulations apply to the Native Hawaiian Vocational Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 402.

(Authority: 20 U.S.C. 2313(c))

§ 402.5 What definitions apply?

The following definitions apply to the Native Hawaiian Vocational Education Program:

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Native Hawaiian means any individual who has any ancestors who were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(Authority: 20 U.S.C. 2313(a)(1)(B))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 402.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 402.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 402.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 402.21.

(Authority: 20 U.S.C. 2313(c))

§ 402.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Program design.* (35 points) The Secretary reviews each application to determine the extent to which—

(1) The application presents a complete program design, including identifying the services to be provided, who will provide them, how they will be provided, and the expected outcomes for each activity;

(2) The proposed program is designed to meet the identified vocational education needs of native Hawaiians;

(3) The application proposes an effective plan for coordination with the office of the Hawaii State director for vocational education; and

(4) If vocational training is proposed within the project—

(i) Proposes measurable goals for student enrollment, completion, and placement.

(ii) Proposes goals that take into consideration any related standards and measures developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) programs in that geographic area;

(iii) Proposes goals that take into consideration any standards set by the State board for vocational education for the occupation and geographic area; and

(iv) Describes how successful program completion will be determined for each occupation for which training is to be provided, in terms of the academic and vocational competencies demonstrated by enrollees prior to successful completion and any academic or work credentials acquired upon completion.

(b) *Management plan.* (25 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship among goals, objectives, and activities;

(3) The way the applicant plans to use the resources and personnel from the grant to achieve each objective; and

(4) How any contracts awarded by the grantee will be awarded, monitored, and evaluated.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the project's plan for an independent evaluation of the project, including, if applicable, the extent to which the plan includes activities during the formative stages of the project to help guide and improve the project, as well as a final evaluation that includes summary data and recommendations.

(2) The Secretary reviews each application to determine whether, for any training programs proposed—

(i) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers; and

(ii) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex and socio-economic status for each occupation for which training is provided.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 402.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an external evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application; and

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress when training is provided by the project, including—

(i) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(c))

5. A new part 403 is added to read as follows:

PART 403—STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAM

Subpart A—General

Sec.

403.1 What is the State Vocational and Applied Technology Education Program?
403.2 Who is eligible for an award?
403.3 What regulations apply?
403.4 What definitions apply?

Subpart B—What Are the State's Organizational and Planning Responsibilities?

403.10 What is the State board?
403.11 What are the principal responsibilities of the State board?
403.12 What are the additional responsibilities of the State board?
403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?
403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?
403.15 What are the personnel requirements regarding coordination with services under Chapter 1 of Title I of the Elementary and Secondary Education Act?
403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?
403.17 What are the State's responsibilities regarding a State council on vocational education?
403.18 What are the membership requirements of a State council on vocational education?
403.19 What are the responsibilities of a State council on vocational education?

Subpart C—How Does a State Apply for a Grant?

403.30 What documents must a State submit to receive a grant?
403.31 How is the State plan developed?
403.32 What must the State plan contain?
403.33 What procedures does a State use to submit its State plan?
403.34 When are amendments to the State plan required?

Subpart D—How Does the Secretary Make a Grant to a State?

403.50 How does the Secretary make allotments?
403.51 How does the Secretary make reallotments?
403.52 When does the Secretary approve State plans and amendments?

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

403.60 What are the basic programs?
403.61 What projects, services, and activities are permissible under the basic programs?
403.62 What administrative provisions apply?
403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

State Programs and State Leadership Activities

403.70 How must funds be used under the State Programs and State Leadership Activities?
403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

403.80 Who is eligible for a subgrant or contract?
403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?
403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

Sex Equity Program

403.90 Who is eligible for a subgrant or contract?
403.91 How must funds be used under the Sex Equity Program?
403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

Programs for Criminal Offenders

403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?
403.101 How must funds be used under the Programs for Criminal Offenders?
403.102 What other requirements apply to the Program for Criminal Offenders?

Secondary, Postsecondary, and Adult Vocational Education Programs

403.110 Who is eligible for a subgrant or contract?
403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?
403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?
403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?
403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?
403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?
403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?
403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?
403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?
403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?
403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

403.130 What are the Special Programs?
403.131 Who is eligible for an award under the Special Programs?

Vocational Education Support Programs by Community-Based Organizations

403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?
403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

Consumer and Homemaking Education Programs

403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?
403.151 How must funds be used under the Consumer and Homemaking Education Programs?

Comprehensive Career Guidance and Counseling Programs

403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?
403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

Business-Labor-Education Partnership for Training Program

403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?
403.171 Who is eligible to apply to a State board for an award?
403.172 What special considerations must the State board give in approving projects, services, and activities?
403.173 What expenses are allowable?
403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

Subpart G—What Financial Conditions Must Be Met by a State?

403.180 How must a State reserve funds for the basic programs?
403.181 What are the cost-sharing requirements applicable to the basic programs?
403.182 What is the maintenance of fiscal effort requirement?
403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?
403.184 How does a State request a waiver of the maintenance of effort requirement?
403.185 How does the Secretary compute maintenance of effort in the event of a waiver?
403.186 What are the administrative cost requirements applicable to a State?
403.187 How may a State provide technical assistance?
403.188 What is a State's responsibility for the cost of services and activities for members of special populations?

Subpart H—What Conditions Must Be Met by Local Recipients?

403.190 What are the requirements for receiving a subgrant or contract?
403.191 What are the requirements for program evaluation?
403.192 What are the requirements for program improvement?
403.193 What are the information requirements regarding special populations?
403.194 What are the comparability requirements?
403.195 What are the administrative cost requirements applicable to local recipients?
403.196 What are the requirements regarding supplanting?
403.197 What are the requirements for the use of equipment?

Subpart I—What Are the Administrative Responsibilities of a State Under the State Vocational and Applied Technology Education Program?

403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?
403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?
403.202 What must each State's system of core standards and measures of performance include?
403.203 What are the State's responsibilities for a State assessment?
403.204 What are the State's responsibilities for program evaluation and improvement?
403.205 What are the State's responsibilities for members of special populations?
403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?
403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?
403.208 What are the requirements regarding supplanting?

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Appendix B to Part 403—Examples for 34 CFR 403.194—Comparability Requirements

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

Subpart A—General

§ 403.1 What is the State Vocational and Applied Technology Education Program?

(a) Under the State Vocational and Applied Technology Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer and conduct vocational education programs that are authorized by the Act.

(b) The State Vocational and Applied Technology Education Program consists of the programs under the basic programs for vocational education authorized by Title II of the Act and listed in § 403.60, and the special programs authorized by Title III of the Act that are covered by the State plan and listed in § 403.130.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.2 Who is eligible for an award?

Except as otherwise provided in § 403.131, a State is eligible for an award under the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2311 and 2311a)

§ 403.3 What regulations apply?

The following regulations apply to the State Vocational and Applied Technology Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 403.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.4 What definitions apply?

The definitions in 34 CFR 400.4 apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2471)

Subpart B—What are the State's Organizational and Planning Responsibilities?

§ 403.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education (State board). The State board must be the sole State agency responsible for the administration or the supervision of the State's vocational and applied technology education program.

(Authority: 20 U.S.C. 2321(a))

§ 403.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by §§ 403.32 (a)(7) and (b)(9) and 403.201 through 403.204;

(c) The development, in consultation with the State council on vocational education, of the State plan and its submission to the Secretary, as required by §§ 403.30 through 403.34;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals, including business, industry, and labor, involved in the planning, administration, evaluation, and coordination of programs funded under the Act;

(e) Convening and meeting as a State board, consistent with applicable State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*).

(Authority: 20 U.S.C. 2321(a))

§ 403.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 403.17, shall establish a limited number of (but at least two) technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures that are consistent with the purposes of the Act for membership, operation, and duration of the technical committees. Their membership must be composed of representatives of—

(i) Employers from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, if appropriate.

(c) Except for the functions described in § 403.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(d) The State board shall carry out the responsibilities described in §§ 403.13 through 403.18 and 403.200 through 403.208.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2321(a)(1), (f), (g))

§ 403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 403.12(c), to administer vocational education programs within the State, to work full-time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents, displaced homemakers, and single pregnant women described in § 403.81, and the sex equity program described in § 403.91;

(2) Gathering, analyzing, and disseminating data on the—

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs described in paragraph (a)(2)(i) of this section;

(3) Reviewing and commenting upon, and making recommendations concerning, the plans of local educational agencies, area vocational education schools, intermediate educational agencies, and postsecondary educational institutions to ensure that the needs of women and men for training in nontraditional jobs are met;

(4)(i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices that tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations, to the State board for inclusion in the State plan, for programs and policies to overcome sex bias and sex stereotyping in the programs described in paragraph (a)(4)(i) of this section;

(5) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(6) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of the Act;

(7) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(8) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State on expanding vocational opportunities for women;

(9) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs;

(10) Developing an annual plan for the use of all funds available for programs described in §§ 403.81 and 403.91;

(11) Managing the distribution of funds pursuant to §§ 403.81 and 403.91;

(12) Monitoring the use of funds distributed to recipients under §§ 403.81 and 403.91;

(13) Evaluating the effectiveness of programs and activities supported by funds under §§ 403.81 and 403.91;

(14) On a competitive basis, allocating and distributing to eligible recipients or community-based organizations subgrants or contracts to carry out the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program;

(15) Ensuring that each subgrant or contract awarded under the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program is of sufficient size, scope, and quality to be effective;

(16) Developing procedures for the collection from eligible recipients or community-based organizations that receive funds under §§ 403.81 and 403.91 of data appropriate to the individuals served in programs under §§ 403.81 and 403.91 in order to permit an evaluation of effectiveness of those programs as required by paragraph (a)(13) of this section; and

(17) Cooperating in the elimination of sex bias and sex stereotyping in Consumer and Homemaking Education Programs.

(b) A State shall, in accordance with § 403.180(b)(4)(i), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2312(a)(4)(A), 2321(b), 2335b, 2362(a)(3))

§ 403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office responsible for administering Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) to review the implementation of the provisions of the Act as they relate to students with disabilities by reviewing all or a representative sample of applications of eligible recipients to ensure that—

(1) Individuals with disabilities are receiving vocational educational services;

(2) Applications of the eligible recipients provide assurances of compliance with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the IDEA and regulations implementing those statutes, regarding equal access to programs; and

(3) Eligible recipients have—

(i) Identified the number of students with disabilities enrolled in the eligible recipients' vocational programs;

(ii) Assessed the vocational needs of those students; and

(iii) Developed an adequate plan to provide supplementary services sufficient to meet the needs of those students.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c))

§ 403.15 What are the personnel requirements regarding coordination with services under Chapter 1 of Title I of the Elementary and Secondary Education Act?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for coordinating services under chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2701 *et seq.*) to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of economically disadvantaged students has been identified; and

(2) The needs of economically disadvantaged students are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (d))

§ 403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of students of limited English proficiency has been identified; and

(2) The needs of students of limited English proficiency for participation in vocational education programs are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (e))

§ 403.17 What are the State's responsibilities regarding a State council on vocational education?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall establish a State council on vocational education. The State council must be appointed—

(1) By the Governor; or

(2) By the State board of education, in a State in which the members of the State board of education are elected, including election by the State legislature.

(b) Each State shall certify to the Secretary the establishment and membership of the State council by June 1 prior to the beginning of each State plan period described in § 403.30.

(c) Each State shall recertify to the Secretary any new member of the State council not more than 60 days after a position on the State council is vacated.

(Authority: 20 U.S.C. 2322 (a), (b))

§ 403.18 What are the membership requirements of a State council on vocational education?

(a) Each State council must be composed of 13 individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representatives of business, industry, trade organizations, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, individuals with disabilities, individuals with limited English proficiency, and minorities.

(c) The State council may include members of vocational student organizations and school boards but may not include employees of the State board of vocational education.

(d) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(Authority: 20 U.S.C. 2322(a))

§ 403.19 What are the responsibilities of a State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the

vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 403.30 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

(2) Make recommendations to the State board and make reports to the Governor, the business community, and general public of the State, concerning—

(i) The State plan;

(ii) Policies the State should pursue to strengthen vocational education, with particular attention to programs for individuals with disabilities; and

(iii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State that emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which individuals who are members of special populations are provided with equal access to quality vocational education programs;

(9) Analyze and review corrections education programs; and

(10)(i) At least once every two years—

(A) Evaluate the extent to which vocational education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(B) Evaluate the vocational education program delivery system assisted under the Act, and the job training program delivery system assisted under the JTPA, in terms of the delivery systems' adequacy and effectiveness in achieving the purposes of both Acts; and

(C) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA;

(ii) Comment on the adequacy or inadequacy of State action in implementing the State plan;

(iii) Make recommendations to the State board on ways to create greater incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

(iv) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education may—

(i) Obtain the services of the professional, technical, and clerical personnel necessary to enable it to carry out its functions under the Act;

(ii) Contract for the services necessary to enable it to carry out its evaluation functions; and

(iii) Submit a statement to the Secretary reviewing and commenting upon the State plan.

(2)(i) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(ii) Each State council on vocational education shall designate an appropriate State agency, or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(3) Each State council on vocational education shall carry out its functions, whether directly or by way of contract for services, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2322(c)-(e) and (f)(2); 2323(c))

Subpart C—How Does A State Apply for a Grant?

§ 403.30 What documents must a State submit to receive a grant?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall submit to the Secretary a State plan for a three-year period, in the case of the initial plan, and a two-year period thereafter, together with annual revisions the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational and Applied Technology Education Program on the basis of program years that coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational and Applied Technology Education Program.

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2323)

§ 403.31 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with, and utilize, the State council on vocational education established under § 403.17.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) A State shall provide public notice of hearings on the State plan at least 30 days prior to the hearings.

(d) In developing a State plan, the State shall conduct an assessment according to § 403.203.

(e) The State board shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult education, postsecondary education, tech-prep education, and secondary education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, that agency shall file its objections with the State board.

(f) The State board shall, in developing the State plan, take into

consideration the relative training and retraining needs of secondary, adult, and postsecondary students.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2323(a)(2) and 2324(a))

§ 403.32 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational and Applied Technology Program, the State shall, in its State plan, provide assurances that —

(1) The State board will comply with the applicable requirements of Titles I, II, III, and V of the Act and regulations implementing those requirements (including the maintenance of fiscal effort requirement in § 403.182);

(2) Eligible recipients will comply with the requirements of Titles I, II, III, and V of the Act and the regulations implementing those requirements;

(3) The State board will develop measurable goals and accountability measures for meeting the needs of individuals who are members of special populations;

(4) The State board will conduct adequate monitoring of projects, services, and activities conducted by eligible recipients to ensure that the eligible recipients are meeting the goals described in paragraph (a)(3) of this section;

(5) To the extent consistent with the number and location of individuals who are members of special populations enrolled in private secondary schools, the State will provide for the participation of those individuals in the vocational education projects, services, and activities assisted under §§ 403.112 and 403.113;

Cross-Reference: See 34 CFR 76.650–76.662, Participation of Students Enrolled in Private Schools.

(6) The State will comply with the provisions of § 403.180, and will distribute all of the funds reserved for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs to eligible recipients pursuant to §§ 403.112, 403.113, and 403.116;

(7) The State will develop and implement a system of standards for performance and measures of performance for vocational education programs at the State level that meets the requirements of §§ 403.201 and 403.202;

(8) In the use of funds available for programs for single parents, displaced homemakers, or single pregnant women under § 403.81, the State will—

(i) Emphasize assisting individuals with the greatest financial need; and

(ii) Give special consideration to displaced homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment;

(9) The State will furnish relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex;

(10) The State will fund programs of personnel development and curriculum development to further the goals identified in the State plan;

(11) The State has thoroughly assessed the vocational education needs of identifiable segments of the population in the State that have the highest rates of unemployment, and those needs are reflected in and addressed by the State plan;

(12) The State board will cooperate with the State council in carrying out the Board's duties under the State plan;

(13) None of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which that acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization;

(14) State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in those agencies that are not receiving funds under the Act;

Cross-Reference: See §§ 403.194 and 403.200.

(15)(i) The State board will provide leadership (qualified by experience and knowledge in guidance and counseling), supervision, and resources for comprehensive career guidance, vocational counseling, and placement programs; and

(ii) As a component of the assurances described in paragraph (a)(15)(i) of this section, the State board will annually assess and include in the State plan a report on the degree to which expenditures aggregated within the State for career guidance and vocational counseling from allotments under Title II of the Act are not less than expenditures for guidance and counseling within the State under the Carl D. Perkins Vocational Education Act in Fiscal or Program Year 1988;

(Authority: H.R. Rep. No. 660, 101st Cong., 1st Sess. 111 (1990))

(16) The State will provide for such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State, including those funds paid by the State to eligible recipients under the Act;

(17) Funds made available under Title II of the Act will be used to supplement, and to the extent practicable increase, the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant those State or local funds;

Cross-Reference: See §§ 403.196 and 403.208.

(18) Individuals who are members of special populations will be provided with equal access to recruitment, enrollment, and placement activities;

(19) Individuals who are members of special populations will be provided with equal access to the full range of vocational education programs available to individuals who are not members of special populations, including occupationally specific courses of study, cooperative education, apprenticeship programs, and, to the extent practicable, comprehensive career guidance and counseling services, and will not be discriminated against on the basis of their status as members of special populations;

(20) Vocational education programs and activities for individuals with disabilities will be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA and will, if appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of that Act;

(21) Students with disabilities who have individualized education programs developed under section 614(a)(5) of the IDEA, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under sections 612, 614, and 615 of that Act;

(22) Students with disabilities who do not have individualized education programs developed under section 614(a)(5) of the IDEA or who are not eligible to have such a program, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, for the purpose of the State Vocational and Applied Technology Education Programs, those rights and protections

will include making vocational education programs readily accessible to eligible individuals with disabilities through the provision of services described § 403.190(b)(3);

(23) Vocational education planning for individuals with disabilities will be coordinated among appropriate representatives of vocational education, special education, and State vocational rehabilitation agencies;

(24) The provision of vocational education to each student with disabilities will be monitored to determine if that education is consistent with the individualized education program developed for the student under section 614(a)(5) of the IDEA, in any case in which an individualized education program exists;

(25) The provision of vocational education will be monitored to ensure that disadvantaged students and students of limited English proficiency have access to that education in the most integrated setting possible;

(26)(i) The requirements of the Act relating to individuals who are members of special populations—

(A) Will be carried out under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for students who are members of special populations; and

(B) Will meet education standards of the State educational agency or State board;

(ii) With respect to students with disabilities, the supervision carried out under paragraph (a)(26)(i) of this section will be carried out consistent with, and in conjunction with, supervision by the State educational agency or State board carried out under section 612(6) of the IDEA;

(27) Funds received under the Business-Labor-Education Partnership for Training Program will be awarded on a competitive basis solely for vocational education programs, including programs that—

(i) Provide apprenticeships and internships in industry;

(ii) Provide new equipment;

(iii) Provide teacher internships or teacher training;

(iv) Bring representatives of business and organized labor into the classroom;

(v) Increase the access to, and quality of, programs for individuals who are members of special populations;

(vi) Strengthen coordination between vocational education programs and the labor and skill needs of business and industry;

(vii) Address the economic development needs of the area served by the partnership;

(viii) Provide training and career counseling that will enable workers to retain their jobs;

(ix) Provide training and career counseling that will enable workers to upgrade their jobs; and

(x) Address the needs of new and emerging industries, particularly industries in high-technology fields;

(28) In administering the Business-Labor-Education Partnership for Training Program, the State board will—

(i) Give preference to partnerships that coordinate with local chambers of commerce (or the equivalent), local labor organizations, or local economic development plans;

(ii) Give priority to programs offered by partnerships that provide job training in areas or skills where there are significant labor shortages; and

(iii) Ensure an equitable distribution of assistance under this part between urban and rural areas;

(29) Except as provided in paragraph (a)(30) of this section, not less than 50 percent of the aggregate cost of programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources, and not less than 50 percent of the non-Federal share will be provided by businesses or labor organizations participating in the partnerships; and

(30) In the event that a partnership includes a small business or labor organization, 40 percent of the aggregate cost of the programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources and not less than 50 percent of the non-Federal share will be provided by participating business or labor organizations.

(b) *Descriptions.* To participate in programs authorized under the State Vocational and Applied Technology Education Program, the State must include the following descriptions in the State plan:

(1) The procedures and criteria for, and the results of, each of the assessments required by § 403.203, including the needs identified by the assessments.

(2) The plans for the use of the funds and how those planned uses reflect the needs described in paragraph (b)(1) of this section.

(3) The manner in which the State will comply with the requirements in the Act regarding access and services for individuals who are members of special populations and a description of the responsiveness of programs to the special needs of those students.

(4) The estimated distribution, for each instructional level—secondary, postsecondary, and adult—of funds to corrections educational agencies as prescribed by § 403.100, of funds to local educational agencies, area vocational education schools, or intermediate educational agencies as prescribed by §§ 403.112 and 403.113, and of funds to eligible institutions as prescribed by § 403.116.

(5) The criteria the State board will use —

(i) In approving applications of eligible recipients; and

(ii) For spending the amounts reserved for the State under § 403.180(b).

(6) How funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis that is not limited to the area in which the school is located.

(Authority: H.R. Rep. No. 660, 101st Cong., 1st Sess. 109 (1990))

(7) In each State plan submitted after Fiscal Year 1991, the progress the State has made in achieving the goals described in previous State plans.

(8) The methods of administration necessary for the prompt and efficient administration of programs under the Act.

(9) How the State will implement program evaluations with eligible recipients as prescribed in §§ 403.191, 403.192, 403.201(a) (3) and (4), and 403.204.

(10) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act (20 U.S.C. 1201 *et seq.*), Chapter 1, the IDEA, and the Rehabilitation Act of 1973, and with apprenticeship programs.

(11) Procedures by which an area vocational educational school, intermediate educational agency, or local educational agency may appeal decisions adverse to its interests with respect to programs assisted under the Act.

Cross-Reference: See 34 CFR 76.401.

(12) How the State will comply with the provisions of §§ 403.32(a)(18)–(26), 403.115, and 403.205.

(13) The State's rationale for distribution of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs.

(14) The State corrections educational agency or agencies designated to administer vocational education

programs assisted under the Act, and the plan for the use of funds provided under § 403.180(b)(5).

(15) Any delegation of functions under § 403.12(c).

(16) The manner in which the State board will comply with the applicable requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirements in § 403.182).

(17) A summary of recommendations made at public hearings on the State plan and the State board's response.

(18) How the State will determine which LEAs are located in a rural sparsely-populated area for purposes of § 403.112(d)(3).

(19) Which indices of economic status the State will use to determine the number of economically disadvantaged students attending vocational educational programs for the purposes of § 403.114.

(20) What method the State will use to distribute minimal amounts for the purpose of § 403.119(a).

(21) As appropriate, what method the State will use to distribute funds under § 403.118.

(c) *Consultations.* A State desiring to participate in the State Vocational and Applied Technology Education Program shall include in its State plan—

(1) A statement, if any, from the State advisory council on vocational education reviewing and commenting on the State plan;

(2) As necessary, the State's reasons for not accepting the recommendations of the State Committee of Practitioners for modifying standards and measures to be used in the statewide system of core standards and measures of performance; and

(3) As necessary, the State's response to any objections raised by State agencies consulted during the development of the State plan as required by § 403.31(e).

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2321(a)(2); 2322(e); 2323(a)(2)(B), (b); 2324(a); 2325(a), (d)(3); 2328(a); 2336(a)(1); 2341(b)(2), (d)(3); 2341b(a); 2392(b); 2463; and 2468e(a)(1))

§ 403.33 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan.

(b) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

Cross-Reference: See § 403.19(c)(1)(iii).

(c) Each State plan must be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which the plan is to be in effect.

(d) The State plan is considered to be the general application required by section 435 of the General Education Provisions Act (20 U.S.C. 1232d).

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2322(d)(1) and (2)(A), (e); 2323(a)(2)(A); and 2324(b))

§ 403.34 When are amendments to the State plan required?

The State board, in consultation with the State council, shall submit amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be submitted for review by the State job training coordinating council and the State council on vocational education before submittal to the Secretary.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2323(c))

Subpart D—How Does the Secretary Make a Grant to a State?

§ 403.50 How does the Secretary make allotments?

(a)(1) From funds made available under section 3(c) of the Act for the basic programs listed in § 403.60, and under section 3(d) of the Act for the special programs listed in § 403.130, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act to the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to a State.

(b)(1) From funds made available under sections 3(b)(2) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

(2) The Secretary makes an award to a State council upon the State council's submission of an annual budget covering the proposed expenditures of the State council for the following program year, and when the Secretary has determined that the State plan is in substantially approvable form.

(c) From funds made available under section 3(b)(1)(B) of the Act for the territories, the Secretary allots funds each fiscal year according to the provisions of section 101A(a) of the Act.

(d)(1) The Secretary awards funds remaining after allotments are made under paragraph (c) of this section to the Center for the Advancement of Pacific Education (CAPE) or its successor entity, such as the Pacific Regional Educational Laboratory.

(2) CAPE or its successor entity shall make grants for vocational education and training in Guam, American Samoa, Palau, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, and the Republic of the Marshall Islands for the purpose of providing direct educational services, including—

(i) Teacher and counselor training and retraining;

(ii) Curriculum development; and

(iii) Improving vocational education and training programs in secondary schools and institutions of higher education (as defined in § 403.117(b)), or improving cooperative programs involving both secondary schools and institutions of higher education.

(3) CAPE may not use more than five percent of the funds received under paragraph (d)(1) of this section for administrative costs.

(Authority: 20 U.S.C. 2311; 2311a; and 2461)

§ 403.51 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 403.50(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during

the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(b))

§ 403.52 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, within sixty days of its receipt unless the plan or amendment is—

(i) Inconsistent with the requirements and purposes of the Act; or

(ii) Not of sufficient quality to meet the objectives of the Act, including the objective of developing and implementing program evaluations and improvements.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b)(1) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from—

(i) The State council on vocational education;

(ii) The State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education;

(iii) The State agency responsible for secondary education;

(iv) The State Committee of Practitioners established under 34 CFR 400.6; and

(v) The State job training coordinating council.

(2) In reviewing an amendment to a State plan, the Secretary considers available comments from the State job training coordinating council and the State council on vocational education.

(Authority: 20 U.S.C. 2323(c), 2324, and 2325(d)(3))

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

§ 403.60 What are the basic programs?

The following basic programs are authorized by Title II of the Act:

(a) State Programs and State Leadership Activities.

(b) Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(c) Sex Equity Programs.

(d) Programs for Criminal Offenders.

(e) Secondary School Vocational Education Programs.

(f) Postsecondary and Adult Vocational Education Programs.

(Authority: 20 U.S.C. 2302)

§ 403.61 What projects, services, and activities are permissible under the basic programs?

Projects, services, and activities described in §§ 403.70, 403.71, 403.81, 403.91, 403.101, and 403.111 may include—

(a) Work-site programs such as cooperative vocational education, programs with community-based organizations, work-study, and apprenticeship programs;

(b) Placement services and activities for students who have successfully completed vocational education programs; and

(c) Programs that involve students in addressing the needs of the community in the production of goods or services that contribute to the community's welfare or that involve the students with other community development planning, institutions, and enterprises.

(Authority: 20 U.S.C. 2468e(c))

§ 403.62 What administrative provisions apply?

(a) Any project assisted with funds made available for the basic programs must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.

(b) Each State board receiving financial assistance for the basic programs may consider granting academic credit for vocational education courses that integrate core academic competencies.

(Authority: 20 U.S.C. 2468e (b) and (d))

§ 403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational and Applied Technology Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions, such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly if it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for statewide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational and Applied Technology Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, employers, private vocational training institutions, private postsecondary education institutions, labor organizations, and joint labor management apprenticeship programs.

(d) If projects, services, and activities are carried out by a school operated by the State board under paragraph (a)(2) of this section or are carried out by a State agency or institution under paragraph (a)(3) of this section, the requirements dealing with local applications (§§ 403.190 and 403.32(b)(5)(i)) apply in the same manner as to other eligible recipients.

(Authority: 20 U.S.C. 2323(b)(5), (6); 2335(a)(3); 2335b; 2342(c)(2)(N); and 2343)

State Programs and State Leadership Activities

§ 403.70 How must funds be used under the State Programs and State Leadership Activities?

A State shall use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) to conduct programs, projects, services, and activities that include—

(a) Professional development activities—

(1) For vocational teachers and academic teachers working with vocational education students, including corrections educators and counselors and educators and counselors in community-based organizations; and

(2) That include inservice and preservice training of teachers in programs and techniques, including integration of vocational and academic curricula, with particular emphasis on training of minority teachers;

(b) Development, dissemination, and field testing of curricula, especially curricula that—

(1) Integrate vocational and academic methodologies; and

(2) Provide a coherent sequence of courses through which academic and occupational skills may be measured; and

(c) Assessment of programs conducted with assistance under the Act including the development of—

(1) Performance standards and measures for those programs; and

(2) Program improvement and accountability with respect to those programs.

(Authority: 20 U.S.C. 2331(b))

§ 403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

In addition to the required activities in § 403.70, a State may use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) for programs, projects, services, and activities that include—

(a) The promotion of partnerships among business, education (including educational agencies), industry, labor, community-based organizations, or governmental agencies;

(b) The support for tech-prep education as described in 34 CFR part 406;

(c)(1) The support of vocational student organizations that are an integral part of the vocational education instructional program, especially with respect to efforts to increase minority participation in those organizations.

(2) The support of vocational student organizations may include, but is not limited to, expenditures for—

(i) The positions of State executive secretaries and State advisors for vocational student organizations;

(ii) Leadership development workshops;

(iii) The development of curriculum for vocational student organizations; and

(iv) Field or laboratory work incidental to vocational training so long as the activity is supervised by vocational education personnel who are qualified in the occupational area and is available to all students in the instructional program without regard to membership in any student organization.

(3) The support of vocational student organizations may not include—

(i) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(ii) Purchase of supplies, jackets, and other effects for students' personal ownership;

(iii) Cost of non-instructional activities such as athletic, social, or recreational events;

(iv) Printing and disseminating non-instructional newsletters;

(v) Purchase of awards for recognition of students, advisors, and other individuals; or

(vi) Payment of membership dues;

(d) Leadership and instructional programs in technology education; and

(e) Data collection.

(Authority: 20 U.S.C. 2331(c); H.R. Rep. No. 660, 101st Cong., 1st Sess. 117 (1990))

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

§ 403.80 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program.

(Authority: 20 U.S.C. 2335(a)(2), (3); 2335b(1))

§ 403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?

A State shall use funds reserved in accordance with § 403.180(b)(2)(i) for individuals who are single parents, displaced homemakers, or single pregnant women only to—

(a) Provide, subsidize, reimburse, or pay for preparatory services, including instruction in basic academic and occupational skills, necessary educational materials, and career guidance and counseling services in preparation for vocational education and training that will furnish single parents, displaced homemakers, and single pregnant women with marketable skills;

(b) Make grants to eligible recipients for expanding preparatory services and vocational education services if the expansion directly increases the eligible recipients' capacity for providing single parents, displaced homemakers, and single pregnant women with marketable skills;

(c) Make grants to community-based organizations for the provision of preparatory and vocational education services to single parents, displaced homemakers, and single pregnant women if the State determines that the community-based organizations have demonstrated effectiveness in providing comparable or related services to single parents, displaced homemakers, and single pregnant women, taking into account the demonstrated performance of such organizations in terms of cost, the quality of training, and the characteristics of the participants;

(d) Make preparatory services and vocational education and training more accessible to single parents, displaced homemakers, and single pregnant women by assisting those individuals with dependent care, transportation services, or special services and supplies, books, and materials, or by organizing and scheduling the programs so that those programs are more accessible; or

(e) Provide information to single parents, displaced homemakers, and single pregnant women to inform those individuals of vocational education programs, related support services, and career counseling.

(Authority: 20 U.S.C. 2335(a))

§ 403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

The programs and services described in § 403.81 may be provided in postsecondary or secondary school settings, including area vocational education schools, and community-based organizations that meet the requirements of § 403.81(c), that serve single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2335(b))

Sex Equity Program

§ 403.90 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Sex Equity Program.

(Authority: 20 U.S.C. 2335b(1))

§ 403.91 How must funds be used under the Sex Equity Program?

Except as provided in § 403.92, each State shall use amounts reserved for the Sex Equity Program in accordance with § 403.180(b)(2)(ii) only for—

(a) Programs, services, comprehensive career guidance and counseling, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education;

(b) Preparatory services and vocational education programs, services, and activities for girls and women, aged 14 through 25, designed to enable the participants to support themselves and their families; and

(c) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a) and (b) of this section, including dependent-care services and transportation.

(Authority: 20 U.S.C. 2335a(a))

§ 403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

The individual appointed under § 403.13(a) may waive the requirement in § 403.91(b) with respect to age limitations if the individual determines (through appropriate research) that the

waiver is essential to meet the objectives of § 403.91.

(Authority: 20 U.S.C. 2335a(b))

Programs for Criminal Offenders

§ 403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?

(a) The State Board shall designate one or more State corrections educational agencies to administer programs assisted under the Act for juvenile and adult criminal offenders in correctional institutions in the State including correctional institutions operated by local authorities.

(b) Each State corrections educational agency that desires to be designated under paragraph (a) of this section shall submit to the State board a plan for the use of funds.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2336(a))

§ 403.101 How must funds be used under the Programs for Criminal Offenders?

In administering programs receiving funds reserved under § 403.180(b)(5) for criminal offenders, each State corrections educational agency designated under § 403.100(a) shall—

(a) Give special consideration to providing—

(1) Services to offenders who are completing their sentences and preparing for release; and

(2) Grants for the establishment of vocational education programs in correctional institutions that do not have such programs;

(b) Provide vocational education programs for women who are incarcerated;

(c) Improve equipment; and

(d) In cooperation with eligible recipients, administer and coordinate vocational education services to offenders before and after their release.

(Authority: 20 U.S.C. 2336(b))

§ 403.102 What other requirements apply to the Program for Criminal Offenders?

Each State corrections educational agency designated under § 403.100(a) shall meet the requirements in §§ 403.191 and 403.192.

(Authority: 20 U.S.C. 2471(22))

Secondary, Postsecondary, and Adult Vocational Education Programs

§ 403.110 Who is eligible for a subgrant or contract?

(a) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Secondary School Vocational Education Program:

(1) A local educational agency.

(2) An area vocational education school or intermediate educational agency that meets the requirements in § 403.113.

(b) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Postsecondary and Adult Vocational Education Programs:

(1) An institution of higher education as defined in § 403.117(b), including a nonprofit institution that satisfies the conditions set forth in § 403.111(d)(14).

(2) A local educational agency serving adults.

(3) An area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs.

(c) Only an entity that provides or will provide vocational education in a program that meets the requirements of § 403.111 is eligible to receive an award under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(Authority: 20 U.S.C. 2341(a) and (d); 2341a (a) and (d)(1); and 2342(c))

§ 403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a)(1) Each eligible recipient that receives an award under §§ 403.112, 403.113, or § 403.116 shall use funds under that award to improve vocational education programs.

(2) Projects assisted with funds awarded under §§ 403.112, 403.113, or § 403.116 must—

(i) Provide for the full participation of individuals who are members of special populations by providing the supplementary and other services required by § 403.190(b) necessary for them to succeed in vocational education; and

Cross-Reference: See appendix A to part 403 and §§ 403.190(c) and 403.193(e).

(ii) Operate at a limited number of sites or with respect to a limited number of program areas.

(3) If an eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 meets the requirements in this section and §§ 403.190(b) and 403.193, it may use those Federal funds to serve students who are not members of special populations.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or § 403.116 shall give priority for assistance under those sections to sites or program areas that serve the highest concentrations of individuals who are members of special populations.

Examples: Methods by which an eligible recipient may give priority to sites or program areas that serve the highest concentrations of individuals who are members of special populations include, but are not limited to, the following:

Example 1: *Method to give priority to a limited number of sites.* Based on data from the preceding fiscal year—

(a) First, a local educational agency ranks each site based on the percentage of the site's total enrollment of students who are members of special populations.

(b) Second, the local educational agency establishes a funding cut-off point for sites above the district-wide percentage of special populations enrollment. The local educational agency funds sites above the cut-off point but does not fund sites below that point.

Example 2: *Method to give priority to a limited number of program areas.* Based on data from the preceding fiscal year—

(a) First, a postsecondary institution ranks each program area based on the percentage of the program area's total enrollment of students who are members of special populations.

(b) Second, the postsecondary institution establishes a funding cut-off point for program areas that rank above the institution-wide average percentage of special populations enrollment. The postsecondary institution funds projects in a program area that is above the cut-off point but does not fund projects in program areas below that point.

Example 3: *Method to give priority to a limited number of sites.* Based on data from the preceding fiscal year—

(a) First, an LEA or postsecondary institution identifies a site with a high concentration of special populations;

(b) Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations has been lower than the overall rate of participation for members of special populations at the site; and

(c) Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

Note to examples in § 403.111: Absolute counts of special population members may be used to determine the sites or program areas with the highest concentrations of special population members instead of, or in combination with, percentages of special population members

(c) Funds made available from an award under §§ 403.112, 403.113, or § 403.116 must be used to provide vocational education in programs that—

(1) Are of sufficient size, scope, and quality as to be effective;

(2) Integrate academic and vocational education in those programs through coherent sequences of courses so that students achieve both academic and occupational competencies; and

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in §§ 403.190(b) and 403.193, so that these populations have an opportunity to enter vocational education that is equal to that afforded to the general student population.

Cross-Reference: See appendix A to part 403.

(d) In carrying out the provisions of paragraph (c) of this section, an eligible recipient under §§ 403.112, 403.113, or § 403.116 may use funds for activities that include, but are not limited to—

(1) Upgrading of curriculum;

(2) Purchase of equipment, including instructional aids;

(3) Inservice training of both vocational instructors and academic instructors working with vocational education students for integrating academic and vocational education;

(4) Guidance and counseling;

(5) Remedial courses;

(6) Adaptation of equipment;

(7) Tech-prep education programs;

(8) Supplementary services designed to meet the needs of special populations;

(9) Payment in whole or in part with funds under §§ 403.112, 403.113, or § 403.116 for a special populations coordinator, who must be a qualified counselor or teacher, to ensure that individuals who are members of special populations are receiving adequate services and job skill training;

(10) Apprenticeship programs;

(11) Programs that are strongly tied to economic development efforts in the State;

(12) Programs that train adults and students for all aspects of an occupation in which job openings are projected or available;

(13) Comprehensive mentor programs in institutions of higher education offering comprehensive programs in teacher preparation, which seek to use fully the skills and work experience of individuals currently or formerly employed in business and industry who are interested in becoming classroom instructors and to meet the need of vocational educators who wish to upgrade their teaching competencies; or

(14) Provision of education and training through arrangements with private vocational training institutions, private postsecondary educational institutions, employers, labor organizations, and joint labor-management apprenticeship programs if those institutions, employers, labor organizations, or programs can make a significant contribution to obtaining the objectives of the State plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

(Authority: 20 U.S.C. 2342)

§ 403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Secondary School Vocational Education Program.

(b) *General rule.* Except as provided in paragraphs (c) and (d) of this section and § 401.119, a State shall distribute funds reserved for the Secondary School Vocational Education Program to local educational agencies (LEAs) according to the following formula:

(1) From 70 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 70 percent as the amount the LEA was allocated under section 1005 of chapter 1 (20 U.S.C. 2711) in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total amount received under section 1005 of chapter 1 by all LEAs in the State in that preceding year.

(2) From 20 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 20 percent as the number of students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA served by the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total number of those students served by all LEAs in the State in that preceding year.

(3) From 10 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 10 percent as the number of students enrolled in schools and adults enrolled in vocational education training programs under the jurisdiction of the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of students enrolled in schools in kindergarten through 12th grade and adults enrolled in vocational education training programs under the jurisdiction of all LEAs in the State in that preceding year.

Example: Assume that a State has reserved $5,000,000 of its basic programs funds under Title II of the Act for secondary school programs.

(a)(1) All LEAs in the State were allocated a total of $80,000,000 under section 1005 of Chapter 1 in the preceding fiscal year. Of that amount, school district "A" was allocated $400,000.

(2) The allocation for school district "A" is calculated by multiplying $3,500,000 (70 percent of $5,000,000) by .005 of the State total ($400,000 ÷ $80,000,000). The allocation for school district "A" would be $17,500 under paragraph (b)(1) of this section.

(b)(1) All LEAs in a State served a total of 100,000 students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA in the preceding fiscal year. Of that total, school district "A" served 400 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying $1,000,000 (20 percent of $5,000,000) by .004 of the State total (400 ÷ 100,000). The allocation for school district "A" would be $4,000 under paragraph (b)(2) of this section.

(c)(1) All LEAs in a State enrolled a total of 1,000,000 students (including adults enrolled in vocational education training programs in those LEAs) in the preceding fiscal year. Of that number school district "A" enrolled 3,500 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying 500,000 (10 percent of $5,000,000) by .0035 of the State total (3,500 ÷ 1,000,000). The allocation for school district "A" would be $1,750 under paragraph (b)(3) of this section.

(c) *Exception to the general rule.* In applying the provisions in paragraph (b) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (b) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate

number of students each agency received in the previous year from the LEA that operates only elementary schools.

(d)(1) *Minimum grant amount.* Except as provided in paragraph (d)(3) of this section, an LEA is not eligible for a grant under the Secondary School Vocational Education Program unless the amount allocated to the LEA under paragraph (b) of this section is not less than $15,000.

(2)(i) An LEA may enter into a consortium with one or more LEAs for the purpose of providing services under the Secondary School Vocational Education Program in order to meet the minimum grant requirement in paragraph (d)(1) of this section.

(ii) A consortium arrangement under paragraph (d)(2)(i) of this section must serve primarily as a structure for operating joint projects that provide services to all participating local educational agencies.

(iii) A project operated by a consortium must meet the size, scope, and quality requirement of § 403.111(c)(1).

Example: Under the distribution formula for the Secondary School Vocational Education Program, three LEAs earn $5,000 each (which is less than the $15,000 minimum grant amount for each LEA). The LEAs form a consortium in order to receive an award. One of the LEAs is designated as the fiscal agent for the consortium and receives the $15,000 award for the consortium. The consortium may operate and fund with the $15,000 a project or projects for the benefit of all participating LEAs. The fiscal agent of the consortium may not subgrant back to the participating LEAs the amounts they contributed to the consortium.

(3) A State may waive paragraph (d)(1) of this section in any case in which the LEA—

(i) Is located in a rural, sparsely populated area;

(ii) Demonstrates that it is unable to enter into a consortium for purposes of providing services under the Secondary School Vocational Education Program; and

(iii) Demonstrates that the projects to be assisted meet the size, scope, and quality requirements in § 403.111(c)(1).

(4) Any amounts that are not distributed by reason of paragraph (d)(1) of this section must be redistributed in accordance with the provisions in paragraph (b) of this section.

Cross-Reference: See 34 CFR 403.113(d).

(Authority: 20 U.S.C. 2341 (a), (b), and (c))

§ 403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?

(a) A State shall distribute funds reserved under § 403.112(a) directly to the appropriate area vocational education school or intermediate educational agency in any case in which—

(1) The area vocational education school or intermediate educational agency and an LEA—

(i) Have formed or will form a consortium for the purpose of receiving funds reserved under § 403.112(a); or

(ii) Have entered into or will enter into a cooperative arrangement for the purpose of receiving funds reserved under § 403.112(a); and

(2)(i) The area vocational education school or intermediate educational agency serves a proportion of students with disabilities and students who are economically disadvantaged that is approximately equal to or greater than the proportion of those students attending the secondary schools under the jurisdiction of all of the LEAs sending students to the area vocational education school or the intermediate educational agency; or

(ii) The area vocational education school or intermediate educational agency demonstrates that it is unable to meet the criterion in paragraph (a)(2)(i) of this section due to the lack of interest by students with disabilities and students who are economically disadvantaged in attending vocational education programs in that area vocational education school or intermediate educational agency.

(b) If an area vocational education school or intermediate educational agency meets the requirements of paragraph (a) of this section, then the amount that would otherwise be allocated to the LEA may be distributed to the area vocational education school, the intermediate educational agency, and the LEA—

(1) Based on each school's or entity's relative share of students with disabilities and students who are economically disadvantaged who are attending vocational education programs that meet the requirements of § 403.111 (based, if practicable, on the average enrollment for the prior 3 years); or

(2) On the basis of an agreement between the LEA and the area vocational education school or intermediate educational agency.

(c) Notwithstanding paragraphs (a) and (b) of this section, and §§ 403.114 and 403.115, prior to distributing funds to any LEA that would receive an allocation that is not sufficient to conduct a program that meets the requirements of § 403.111(c), a State shall encourage the LEA to—

(1) Form a consortium or enter a cooperative agreement with an area vocational education school or intermediate educational agency offering programs that meet the requirements of § 403.111(c), and that are accessible to economically disadvantaged students and students with disabilities that would be served by the LEA; and

(2) Transfer its allocation to an area vocational education school or intermediate educational agency.

(d) If an LEA's allocation under § 403.112 meets the minimum grant requirement in § 403.112(d), and the allocation is distributed in part to an area vocational education school or an intermediate educational agency pursuant to paragraphs (a) and (b) of this section, the LEA may retain the amount not distributed to the area vocational education school or an intermediate educational agency even though that amount is less than the minimum grant required by § 403.112(d).

(Authority: 20 U.S.C. 2341(d) (1), (2), and (5))

§ 403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?

(a) For the purposes of § 403.113, a State may determine the number of economically disadvantaged students attending vocational education programs on any of the following bases:

(1) Eligibility for one of the following:

(i) Free or reduced-price meals under the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(ii) The program for aid to Families with Dependent Children under Part A of Title IV of the Social Security Act (42 U.S.C. 601).

(iii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iv) To be counted for purposes of section 1005 of Chapter 1.

(v) Participation in programs assisted under Title II of the JTPA.

(2) Receipt of a Pell grant or assistance under a comparable State program of need-based financial assistance.

(3) Status of an individual who is determined by the Secretary to be low-income according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

(4) Other indices of economic status, including estimates of those indices, if the State demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(b) If a State elects to use more than one factor described in paragraph (a) of this section for purposes of determining the number of economically disadvantaged students enrolled in vocational education programs, the State shall ensure that the data used are not duplicative.

(Authority: 20 U.S.C. 2341(d)(3) and 2471(15))

§ 403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?

The State board shall establish an appeals procedure for resolution of any dispute arising between an LEA and an area vocational education school or an intermediate educational agency with respect to the allocation procedures described in §§ 403.112 and 403.113, including the decision of an LEA to leave a consortium.

Cross-Reference: See 34 CFR 76.401, Disapproval of an application—opportunity for a hearing.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2341(d)(4))

§ 403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Postsecondary and Adult Vocational Education Programs.

(b) *General rule.* (1) A State shall distribute funds reserved for Postsecondary and Adult Vocational Education Programs to eligible institutions within the State.

(2) Except as provided in paragraph (c) of this section and §§ 403.118 and 403.119, each eligible institution must receive an amount that bears the same relationship to the amount of funds reserved for the Postsecondary and Adult Vocational Education Programs as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of § 403.111, including meeting the definition of vocational education in 34 CFR 400.4, offered by the eligible institution in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of those recipients enrolled in these programs within the State in that preceding year.

(c) *Minimum grant amount.* (1) A State may not provide a grant under paragraph (b) of this section to any institution for an amount that is less than $50,000.

(2) Any amounts that are not allocated by reason of paragraph (c)(1) of this section must be redistributed to eligible institutions in accordance with the provisions of paragraph (b) of this section.

(Authority: 20 U.S.C. 2341a (a) and (c))

§ 403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?

For the purposes of §§ 403.116, 403.118, and 403.120 the following definitions apply:

(a) "Eligible institution" means an institution of higher education, an LEA serving adults, or an area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under § 403.116.

(b)(1) "Institution of higher education" means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate, or who are beyond the age of compulsory school attendance;

(ii) Is legally authorized within the State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, or in the case of a hospital or health care facility, that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of that training;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose or, if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions that are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) This term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (b)(1) (i), (ii), (iv), and (v) of this definition. If the Secretary determines that a particular category of these schools does not meet the requirements of paragraph (b)(1)(v) because there is no nationally recognized accrediting agency or association qualified to accredit schools in that category, the Secretary, pending the establishment of such an accrediting agency or association, appoints an advisory committee, composed of persons specially qualified to evaluate training provided by schools in that category, that must—

(i) Prescribe the standards of content, scope, and quality that must be met in order to qualify schools in that category to participate in the program pursuant to this part; and

(ii) Determine whether particular schools not meeting the requirements of paragraph (b)(1)(v) of this definition meet those standards.

(Authority: 20 U.S.C. 1085)

(c) "Pell Grant recipient" means a recipient of financial aid under Subpart 1 of Part A of Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–l *et seq.*).

(Authority: 20 U.S.C. 2341a(d))

§ 403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?

The Secretary may waive § 403.116(b)(2) for any fiscal or program year for which a State submits to the Secretary an application for such a waiver that—

(a) Demonstrates that the formula in § 403.116(b)(2) does not result in a

distribution of funds to the institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula would result in such a distribution.

(b) Includes a proposal for an alternative formula that may include criteria relating to the number of individuals attending institutions within the State who—

(1) Receive need-based postsecondary financial aid provided from public funds;

(2) Are members of families participating in the program for aid to families with dependent children under Part A of Title IV of the Social Security Act (42 U.S.C. 601);

(3) Are enrolled in postsecondary educational institutions that—

(i) Are funded by the State;

(ii) Do not charge tuition; and

(iii) Serve only economically disadvantaged students;

(4) Are enrolled in programs serving economically disadvantaged adults;

(5) Are participants in programs assisted under the JTPA;

(6) Are Pell Grant recipients; and

(c) Proposes an alternative formula that—

(1) Includes direct counts of students enrolled in the institutions;

(2) Directly relates to the status of students as economically disadvantaged individuals;

(3) Is to be uniformly applied to all eligible institutions;

(4) Does not include fund pools for specific types of institutions;

(5) Does not include the direct assignment of funds to a particular institution on a non-formula basis; and

(6) Identifies a more accurate count of economically disadvantaged individuals in the aggregate than does the formula in § 403.116(b)(2).

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2341a(b))

§ 403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?

(a) This section applies in any fiscal or program year in which a State reserves 15 percent or less under § 403.180(b)(1) for distribution under—

(1) The Secondary School Vocational Education Program; or

(2) The Postsecondary and Adult Vocational Education Programs.

(b) Notwithstanding the provisions and §§ 403.112, 403.113, or § 403.116, as applicable, in order to result in a more equitable distribution of funds for programs serving the highest numbers of economically disadvantaged individuals, the State may distribute the funds described in paragraph (a) of this section—

(1) On a competitive basis; or

(2) Through any alternative method determined by the State.

(Authority: 20 U.S.C. 2341b)

§ 403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a) In any fiscal or program year that an LEA, area vocational school, intermediate school district, or eligible institution does not obligate all of the amounts it is allocated for that year under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs, the LEA, area vocational education school, intermediate school district, or eligible institution shall return any unobligated amounts to the State to be reallocated under §§ 403.112(b), 403.113, or § 403.116(b), as applicable.

(b) In any fiscal or program year in which amounts allocated under §§ 403.112(b), 403.113, 403.116(b), or § 403.118 are returned to the State and the State is unable to reallocate those amounts according to those sections in time for the amounts to be obligated in the fiscal or program year, the State shall retain the amounts to be distributed in combination with amounts reserved under §§ 403.112(b), 403.113, 403.116(b), or § 403.118 for the following fiscal or program year.

(Authority: 20 U.S.C. 2341c)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

§ 403.130 What are the Special Programs?

The following special programs are authorized by Title III of the Act and are subject to the requirements of the State plan:

(a) State Assistance for Vocational Education Support Programs by Community-Based Organizations.

(b) Consumer and Homemaking Education Program.

(c) Comprehensive Career Guidance and Counseling Programs.

(d) Business-Labor-Education Partnerships for Training Program.

(Authority: 20 U.S.C. 2302(d)(A)–(D))

§ 403.131 Who is eligible for an award under the Special Programs?

(a) The fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands are eligible for an award under the—

(1) State Assistance for Vocational Education Support and Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Programs; and

(3) Comprehensive Career Guidance and Counseling Programs.

(b) States, as defined in 34 CFR 400.4(b), are eligible for the Business-Labor-Education Partnerships for Training Program.

(Authority: 20 U.S.C. 2302(d)(A)–(D))

Vocational Education Support Programs by Community-Based Organizations

§ 403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) Model programs for school dropouts.

(7) The assessment of students' needs in relation to vocational education and jobs.

(8) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Individuals with disabilities who are educationally or economically

disadvantaged may participate in projects under this program.

(Authority: 20 U.S.C. 2352, 2471(6))

§ 403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board also may establish requirements relating to the contents of the applications, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served that includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2351)

Consumer and Homemaking Education Programs

§ 403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Individual and family health;

(iii) Consumer education;

(iv) Family living and parenthood education;

(v) Child development and guidance;

(vi) Housing and home management, including resource management; and

(vii) Clothing and textiles.

(b) The State shall use the funds for this program for projects, services, and activities—

(1) For residents of economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage, in cooperation with the individual appointed under § 403.13(a), the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update Consumer and Homemaking Education Programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Balancing work and family;

(iv) Improving responses to individual and family crises (including family violence and child abuse);

(v) Strengthening parenting skills (especially among teenage parents);

(vi) Preventing teenage pregnancy;

(vii) Assisting the aged, individuals with disabilities, and members of at risk populations (including the homeless);

(viii) Improving individual, child, and family nutrition and wellness;

(ix) Conserving limited resources;

(x) Understanding the impact of new technology on life and work;

(xi) Applying consumer and homemaking education skills to jobs and careers; and

(xii) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision;

(xi) State leadership, including the activities of student organizations; and

(xii) State administration, subject to § 403.151(c).

(Authority: 20 U.S.C. 2361, 2362(a), (b))

§ 403.151 How must funds be used under the Consumer and Homemaking Education Programs?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve the home environment and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership and one or more full-time State administrators qualified by experience and educational preparation in home economics education.

(3) For purposes of the Consumer and Homemaking Education Program, State leadership includes, but is not limited to, curriculum development, personnel development, research, dissemination activities, and technical assistance.

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2362(c), 2363)

Comprehensive Career Guidance and Counseling Programs

§ 403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

(a) The State shall conduct, in accordance with its State plan, from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decision-making, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education, and job training; and

(2)(i) Encourage the elimination of sex, age, disabling conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, individuals with disabilities, and economically disadvantaged individuals.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and counseling projects such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership;

(ix) The development of career information delivery systems; and

(x) Local administration, including supervision;

(xi) State administration, including supervision, subject to § 403.161(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act (29 U.S.C. 50);

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: 20 U.S.C. 2382(a), (b))

§ 403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 403.160(b)(2) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, individuals with disabilities, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(3) For purposes of Comprehensive Career Guidance and Counseling Programs, State leadership includes, but is not limited to curriculum development, personnel development, research, dissemination activities, and technical assistance; and

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2382(c), 2383)

Business-Labor-Education Partnership for Training Program

§ 403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?

The State board shall, in accordance with the State plan, from its allotment for this program, support the establishment and operation of projects, services, and activities, that—

(a) Provide incentives for the coordination of the Business-Labor-Education Partnership for Training Program with related efforts under the—

(1) National Tech-Prep Education Program in 34 CFR part 405;

(2) State-Administered Tech-Prep Education Program in 34 CFR part 406; and

(3) JTPA; and

(b) May only include, in addition to the activities described in § 403.32(a)(27) through (30),—

(1) Training and retraining of instructional and guidance personnel;

(2) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(3) Acquisition and operation of communications and telecommunications equipment and other high technology equipment for programs authorized by this part;

(4) Other activities authorized by Title III of the Act as may be essential to the successful establishment and operation of projects, services, and activities under the Business-Labor-Education Partnership for Training Program, including activities and related services to ensure access of women, minorities, individuals with disabilities, and

economically disadvantaged individuals; and

(5) Providing vocational education to individuals in order to assist their entry into, or advancement in, high-technology occupations or to meet the technological need of other industries or businesses.

(Authority: 20 U.S.C. 2392(b) and 2393 (a), (d)(1))

§ 403.171 Who is eligible to apply to a State board for an award?

(a) The State board awards subgrants or contracts to partnerships between—

(1) An area vocational education school, a State agency, a local educational agency, a secondary school funded by the Bureau of Indian Affairs, an institution of higher education, a State corrections educational agency, or an adult learning center; and

(2) Business, industry, labor organizations, or apprenticeship programs.

(b) A partnership receiving an award from a State board must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2392(a)(1))

§ 403.172 What special considerations must the State board give in approving projects, services, and activities?

The State board, in approving projects, services, and activities assisted under the Business-Labor-Education Partnership Training Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the program.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the program is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability of successful completion of the program by prospective trainees and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve, as demonstrated by special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance, all segments of the population, including women, minorities, individuals with disabilities, and economically disadvantaged individuals.

(e) Projects, services, and activities to provide vocational education for individuals who have attained 55 years of age in order to assist their entry into, or advancement in, high-technology occupations or to meet the technological needs of other industries or businesses.

(Authority: 20 U.S.C. 2393-(b) and (d)(2))

§ 403.173 What expenses are allowable?

The State board shall use funds awarded under the Business-Labor-Education Partnership for Training Program only for—

(a) Expenses incurred in carrying out the programs, services, and activities described in § 403.170, including, for example, expenses for—

(1) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(2) The introduction or improvement of basic skills instruction, including English-as-a-second-language instruction, in order for an individual to be eligible for employment, to continue employment, or to be eligible for career advancement;

(3) Costs associated with coordination between vocational education programs, business, and industry, including advisory council meetings and newsletters; and

(4) Transportation and child-care services for students necessary to ensure access of women, minorities, individuals with disabilities, and economically disadvantaged individuals to projects, services, and activities authorized by the Business-Labor-Education Partnership for Training Program; and

(b)(1) Subject to paragraph (b)(2) of this section, expenditures for necessary and reasonable administrative costs of the State board and of eligible partners.

(2) Total expenditures for administrative costs of the State board and of eligible partners may not exceed 10 percent of the State's allotment for this program in the first year and five percent of that allotment in each subsequent year.

(Authority: 20 U.S.C. 2392(d) and 2393(a)(1))

§ 403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

(a) The business and industrial share of the costs required in § 403.32(a)(29) may be in the form of either allowable costs or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(b) The State board shall use equal amounts from its allotment under this program and from its allotment for basic programs to provide the Federal share of cost of projects, services, and activities under this program.

(c) If an eligible partner demonstrates to the satisfaction of the State that it is incapable of providing all or part of the non-Federal portion of the costs of projects, services, and activities, as required by § 403.32(a)(29), the State board may designate funds available under Parts A and C of Title II of the Act or funds available from State sources in place of the non-Federal portion.

(Authority: 20 U.S.C. 2392(c))

Subpart G—What Financial Conditions Must Be Met by a State?

§ 403.180 How must a State reserve funds for the basic programs?

(a)(1) Except as provided in paragraph (a)(2) of this section, each State shall reserve from its allotment under the basic programs authorized by Title II of the Act, for—

(i) The Program for Single Parents, Displaced Homemakers, and Single Pregnant Women under § 403.81, and the Sex Equity Program under § 403.91, respectively, an amount that is not less than the amount the State reserved for each of those programs under section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA) from its Fiscal Year (FY) 1991 grant from the FY 1990 appropriation; and

(ii) The Program for Criminal Offenders under § 403.101 an amount that is not less than—

(A) The amount the State reserved for projects, services, or activities under section 202(6) of the CDPVEA from its FY 1991 grant from the FY 1990 appropriation; and

(B) The amount of Federal funds under the CDPVEA, other than the one percent reserved under section 202(6) of the Act, that the State and its eligible recipients obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriation.

(2) In any year in which a State receives an amount for purposes of carrying out programs under Title II of the Act that is less than the amount the State received for those purposes in its FY 1991 grant award from the FY 1990 appropriation under the CDPVEA, the State shall ratably reduce the amounts reserved under paragraph (a)(1) of this section in the same proportion that the amount for carrying out programs under Title II of the Act is less than the amount the State received for those purposes from the FY 1990 appropriation.

(b) Except as provided in paragraph (a) of this section, from its allotment for the basic programs authorized by Title II of the Act, a State shall reserve—

(1) At least 75 percent for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs described in § 403.111;

(2) Ten and one-half percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women described in § 403.81 and the Sex Equity Program described in § 403.91, as follows:

(i) Not less than seven percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(ii) Not less than three percent for the Sex Equity Program;

(3) Not more than eight and one-half percent for State Programs and State Leadership Activities described in §§ 403.70 and 403.71;

(4) Not more than five percent or $250,000, whichever is greater, for administration of the State plan, of which—

(i) Not less than $60,000 must be available for carrying out the provisions in § 403.13, regarding the personnel requirements for eliminating sex discrimination and sex stereotyping; and

(ii) The remaining amounts may be used for the costs of—

(A) Developing the State plan;

(B) Reviewing local applications;

(C) Monitoring and evaluating program effectiveness;

(D) Providing technical assistance;

(E) Ensuring compliance with all applicable Federal laws, including required services and activities for individuals who are members of special populations; and

(F) Supporting the activities of the technical committees it establishes under § 403.12(b)(1); and

(5) One percent for Programs for Criminal Offenders described in § 403.101.

(c) The procedure for meeting the "hold-harmless" requirements in § 403.180(a) and the $250,000 minimum for State administration provision in § 403.180(b)(4) is as follows:

(1) If the five percent reserved for administration is less than the $250,000 minimum allowed by paragraph (b)(4) of this section, or if any of the amounts reserved for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women in § 403.81, the Sex Equity Program in § 403.91, or the Program for Criminal Offenders in § 403.101, respectively, is less than the amount reserved for that program in FY 1990 (funds from the FY 1990 appropriation awarded in the States FY 1991 grant), a State shall subtract any amount necessary to satisfy the $250,000 minimum for State administration or any of the "hold-harmless" amounts from the total basic programs award received by the State.

(2) The State shall reserve $250,000 for administration and shall reserve for any program not meeting the "hold-harmless" requirement an amount necessary to meet that requirement.

(3) The State shall reserve from the remainder of the basic program award an amount for each of the remaining programs that is proportionate to the amount that program would have received in the absence of a shortfall in the amounts reserved for administration or to meet the "hold-harmless" requirements in paragraph (a)(1) of this section.

Example 1: (a) A State receives a basic programs award of $4,000,000. Five percent of the basic programs award equals $200,000, which is $50,000 less than the $250,000 minimum that may be reserved for State administration. To determine the amount of funds that will be reserved for each program under Title II, Parts A, B, and C of the Act, the State first subtracts $250,000 for State administration from the $4,000,000 basic programs award ($4,000,000 − $250,000 = $3,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Title II, Parts A, B, and C of the Act in the absence of a shortfall in the set-aside amount for administration, as follows:

3.0% × $4,000,000 =	$120,000	for Sex Equity Programs.
7.5% × $4,000,000 =	300,000	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5% × $4,000,000 =	340,000	for State Programs and State Leadership Activities.
1.0% × $4,000,000 =	40,000	for Programs for Criminal Offenders.
75% × $4,000,000 =	3,000,000	for Part C of Title II.
	3,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have received in the absence of a shortfall ($3,800,000) and multiplies the remaining basic programs award ($3,750,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($120,000/$3,800,000) × $3,750,000 =	$118,421	for Sex Equity Programs.
($300,000/$3,800,000) × $3,750,000 =	296,053	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($340,000/$3,800,000) × $3,750,000 =	335,526	for State Programs and State Leadership Activities.
($40,000/$3,800,000) × $3,750,000 =	39,474	for Programs for Criminal Offenders.
($3,000,000/$3,800,000) × $3,750,000 =	2,960,526	for Part C of Title II.
	3,750,000	

This example assumes that amounts reserved meet the "hold-harmless" requirement of section 102(c)(1) of the Act.

Example 2: A State's seven percent reserve from its FY 1992 grant for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women is $1,400,000 and the amount reserved for that program from its FY 1991 grant was $1,581,000. Therefore, the amount of FY 1992 funds reserved for that program is $181,000 less than the amount reserved in FY 1991. The State received a basic programs award of $20,000,000 in FY 1992. The other programs under Title II, Part B meet the "hold-harmless" requirement in § 403.180(a)(1), and the amount reserved for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under Title II, Parts A, B, and C of the Act as follows:

(a) First, the State subtracts $1,581,000 from the $20,000,000 total basic programs award ($20,000,000 − $1,581,000 = $18,419,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Parts A, B, and C of Title II of the Act in the absence of a shortfall in the set-aside amount for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women, as follows:

5.0% × $20,000,000 =	$1,000,000	for administration.
3.5% × $20,000,000 =	700,000	for Sex Equity Programs.
8.5% × $20,000,000 =	1,700,000	for State Programs and State Leadership Activities.
1.0% × $20,000,000 =	200,000	for Programs for Criminal Offenders.
75.0% × $20,000,000 =	15,000,000	for Part C of Title II.
	18,600,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($18,600,000) and multiplies the remaining basic programs award ($18,419,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($1,000,000/$18,600,000) × $18,419,000 =	$990,269	for administration.
($700,000/$18,600,000) × $18,419,000 =	693,188	for Sex Equity Programs.
($1,700,000/$18,600,000) × $18,419,000 =	1,683,457	for State Programs and State Leadership Activities.
($200,000/$18,600,000) × $18,419,000 =	198,054	for Programs for Criminal Offenders.
($15,000,000/$18,600,000) × $18,419,000 =	14,854,032	for Part C of Title II.
	18,419,000	

This example assumes that amounts reserved for the Sex Equity Program and Programs for Criminal Offenders meet the "hold-harmless" requirement of section 102(c) (1) and (2) of the Act.

Example 3: A State's one percent reserved from its FY 1992 grant for Programs for Criminal Offenders is $200,000 and the amount reserved for that program under section 202(6) of the CDPVEA plus other amounts obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriations totals $250,000. Therefore, the amount of FY 1992 funds reserved for that program is $50,000 less than the amount reserved and obligated for that program in FY 1991. The State received a basic programs award of $20,000,000 in FY 1992. The other programs under Title II, Part B meet the "hold-harmless requirement of § 403.180(a)(1) and the amount reserved for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under Title II, Parts A, B, and C of the Act as follows:

(a) First, the State subtracts $250,000 from the $20,000,000 total basic programs award ($20,000,000 − $250,000 = $19,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Parts A, B, and C of Title II of the Act in the absence of a shortfall in the set-aside amount for the Programs for Criminal Offenders, as follows:

5.0% × 20,000,000 =	$1,000,000	for administration.
3.5% × 20,000,000 =	700,000	for Sex Equity Programs.
7.0% × 20,000,000 =	1,400,000	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5% × 20,000,000 =	1,700,000	for State Programs and State Leadership Activities.
75.0% × 20,000,000 =	15,000,000	for Part C of Title II.
	19,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($19,800,000) and multiplies the remaining basic programs award ($19,750,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($1,000,000/$19,800,000) × $19,750,000 =	$997,475	for administration.
($700,000/$19,800,000) × $19,750,000 =	$698,232	for Sex Equity Programs.
($1,400,000/$19,800,000) × $19,750,000 =	$1,396,465	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($1,700,000/$19,800,000) × $19,750,000 =	$1,695,707	for State Programs and State Leadership Activities.
($15,000,000/$19,800,000) × $19,750,000 =	$14,962,121	for Part C of Title II.
	$19,750,000	

This example assumes that amounts reserved for the Sex Equity Program and for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women meet the "hold-harmless" requirement of sections 102(c) (1) and (2) of the Act.

(d) The procedure for meeting the ratable reduction provision in paragraph (a)(2) of this section is as follows:

(1) If a State's basic programs award under Title II of the Act for FY 1992 or in future years is less than that State's basic grant amount in FY 1991, a State shall determine the percentage that the basic programs award is of the FY 1991 basic programs award.

(2) The State shall multiply the amounts reserved in FY 1991 for each of the three programs covered by the "hold-harmless" provisions in paragraph (a)(1) of this section by this percentage.

(3) The State shall compare the amounts that would be reserved for these programs in FY 1992 to determine if these amounts are less than the ratably reduced hold-harmless amounts, and if so, shall proceed with the calculation required by paragraph (c) of this section except using the ratably reduced "hold-harmless" amounts.

(Authority: 20 U.S.C. 2312)

§ 403.181 What are the cost-sharing requirements applicable to the basic programs?

(a) A State shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan under § 403.180(b)(4).

(b) The matching requirement under paragraph (a) of this section may be applied overall, rather than line-by-line, to State administrative expenditures.

(c) A State shall provide from non-Federal sources for State administration under the Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year.

Example for paragraph (b): From the five percent reserved for the administration of the State plan, a State must reserve $60,000 to carry out the provisions in § 403.13. The $60,000 must be matched, but the matching funds need not be used for the activities described in § 403.13.

(Authority: 20 U.S.C. 2312(b) and 2468d; H.R. Rep. No. 660, 101st Cong., 2nd Sess. 103–104 (1990))

§ 403.182 What is the maintenance of fiscal effort requirement?

The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(Authority: 20 U.S.C. 2463(a))

§ 403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive the maintenance of effort requirement in § 403.182 for a State for one year only if—

(1) The Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the State's ability to maintain fiscal effort; and

(2) The State has decreased its expenditures for vocational education from non-Federal sources by no more than five percent.

(b) For purposes of this section, "exceptional or uncontrollable circumstances" include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(c) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 2463(b))

§ 403.184 How does a State request a waiver of the maintenance of effort requirement?

A State seeking a waiver of the maintenance of effort requirement in § 403.182 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request;

(2) Information that demonstrates that a waiver is justified; and

(3) Any additional information the Secretary may require.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2463(b))

§ 403.185 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for vocational education from non-Federal sources in the first preceding fiscal year (or program year) with the amount spent in the third preceding fiscal year (or program year).

Example: Because exceptional or uncontrollable circumstances prevented a State from maintaining its level of fiscal effort in a program year 1989 (July 1, 1988–June 30, 1989) at the level of its fiscal effort in program year 1988 (July 1, 1987–June 30, 1988), the Secretary granted the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation). To be eligible to receive its fiscal year 1991 grant (the grant to be awarded for the year after the year of the waiver), the State's expenditures from the first preceding program year (July 1, 1989–June 30, 1990) must equal or exceed its expenditures from the third preceding program year (July 1, 1987 to June 30, 1988).

(Authority: 20 U.S.C. 2463(c))

§ 403.186 What are the administrative cost requirements applicable to a State?

(a) *Basic Programs.* A State may use only funds reserved under § 403.180(b)(4) to administer the programs under Title II of the Act, including Programs for Criminal Offenders.

(b) *Special Programs.* (1) A State may use the funds reserved under § 403.180(b)(4) to administer any of the special programs listed in § 403.130.

(2) In addition to the funds reserved under § 403.180(b)(4), a State may use only an amount of funds from its allotment for the State Assistance for Vocational Education Support Programs by Community-Based Organizations that is necessary and reasonable for the proper and efficient State administration of that program.

(3) In addition to the funds reserved under § 403.180(b)(4), a State may use the amounts reserved for the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Business-Labor-Education Partnership for Training Program under §§ 403.151(c), 403.161(c), and 403.173(b), respectively, for the proper and efficient administration of each program.

(Authority: 20 U.S.C. 2302(d) (A)–(D) and 2312(a))

§ 403.187 How may a State provide technical assistance?

(a) Except as provided in paragraph (b) of this section, a State may use only an amount of the funds reserved for each of the basic programs listed in § 403.60 and the special programs listed in § 403.130 to pay the costs of providing technical assistance that is necessary and reasonable to promote or enhance the quality and effectiveness of that program.

(b) A State may not use funds reserved under § 403.180(b)(1) for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program to pay the costs of providing technical assistance.

(c) In providing technical assistance under paragraph (a) of this section, a State may not use amounts to an extent that would interfere with achieving the purposes of the program for which the funds were awarded.

(Authority: 20 U.S.C. 2302(d) (A)–(D), 2312(a), and 2323(b)(5))

§ 403.188 What is a State's responsibility for the cost of services and activities for members of special populations?

A State is not required to use non-Federal funds to pay the cost of services and activities that it provides to members of special populations pursuant to § 403.32(a) (18)–(26) or to pay the cost of services and activities that eligible recipients provide to members of special populations pursuant to §§ 403.111 (a)(2)(i) and (c)(3), 403.190(b), or 403.193, unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328)

Subpart H—What Conditions Must be Met by Local Recipients?

§ 403.190 What are the requirements for receiving a subgrant or contract?

(a) Each eligible recipient desiring financial assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program must submit to the State board, according to requirements established by the State board, an application covering the same period as the State plan, for the use of that assistance. The State board shall determine requirements for local applications, except that each application must—

(1) Contain a description of—

(i) The vocational education program to be funded, including—

(A) The extent to which the program incorporates each of the requirements described in § 403.111 (a), (b), and (c); and

(B) How the eligible recipient will use the funds available under §§ 403.112, 403.113, or § 403.116 and from other sources to improve the program with regard to each requirement and activity described in § 403.111 (c) and (d);

(ii) How the needs of individuals who are members of special populations will be assessed and the planned use of funds to meet those needs;

(iii) How access to programs of good quality will be provided to students who are economically disadvantaged (including foster children), students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts;

(iv) The program evaluation standards the applicant will use to measure its progress;

(v) The methods to be used to coordinate vocational education services with relevant programs conducted under the JTPA, including cooperative arrangements established with private industry councils established under section 102(a) of that Act, in order to avoid duplication and to expand the range of and accessibility to vocational education services;

(vi) The methods used to develop vocational educational programs in consultation with parents and students of special populations;

(vii) How the eligible recipient coordinates with community-based organizations;

(viii) The manner and the extent to which the eligible recipient considered the demonstrated occupational needs of the area in assisting programs funded under the Act;

(ix) How the eligible recipient will provide a vocational education program that—

(A) Integrates academic and occupational disciplines so that students participating in the program are able to achieve both academic and occupational competence; and

(B) Offers coherent sequences of courses leading to a job skill; and

(x) How the eligible recipient will monitor the provision of vocational education to individuals who are members of special populations, including the provision of vocational education to students with individualized education programs developed under the IDEA;

(2) Provide assurances that—

(i) The programs funded under §§ 403.112, 403.113, or 403.116 will be carried out according to the requirements regarding special populations;

(ii) The eligible recipient will provide a vocational program that—

(A) Encourages students through counseling to pursue coherent sequences of courses;

(B) Assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services such as counseling, English-language instruction, child care, and special aids;

(C) Is of a size, scope, and quality as to bring about improvement in the quality of education offered by the school; and

(D) Seeks to cooperate with the sex equity program carried out under § 403.91; and

(iii) The eligible recipient will provide sufficient information to the State to enable the State to comply with the requirements in § 403.113; and

(3) Contain a report on the number of individuals in each of the special populations.

(b) Each eligible recipient desiring financial assistance under Title II of the Act must provide assurances to the State board that, with respect to any project that is funded under a basic program listed in § 403.60 or a special program listed in § 403.130, it will—

(1) Assist students who are members of special populations to enter vocational education programs, and, with respect to students with disabilities, assist in fulfilling the transitional service requirement of section 626 of the IDEA;

(2) Assess the special needs of students participating in projects receiving assistance under a basic program listed in § 403.60 or a special program listed in § 403.130, with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) Provide supplementary services, as defined in 34 CFR 400.4(b), to students who are members of special populations;

(4) Provide guidance, counseling, and career development activities conducted by professionally trained counselors and teachers who are associated with the provision of those special services; and

(5) Provide counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities.

(c) Each eligible recipient desiring financial assistance under Title II of the Act must provide the services and activities described in paragraph (b) of this section, to the extent possible with funds awarded under the Act, and indicate in its local application whether any non-Federal funds will be used for this purpose.

Cross-Reference: See § 403.193(e).

(d) Each eligible recipient desiring financial assistance under the Act shall provide sufficient information to the State, as the State board requires, to demonstrate to the State board that the eligible recipient's projects comply with § 403.32(a)(18)–(26).

(e) Each eligible recipient desiring financial assistance under the Act shall—

(1) Provide the assurance described in § 403.14(a)(2); and

(2) Include in its application, as appropriate—

(i) The number of disabled students, economically disadvantaged students, and students with limited English proficiency in its vocational program;

(ii) An assessment of the vocational needs of its students with disabilities, economically disadvantaged students,

and students with limited English proficiency; and

(iii) A plan to provide supplementary services sufficient to meet the needs identified in the assessment described in paragraph (e)(2)(ii).

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(Authority: 20 U.S.C. 2321(c)(1), (d), (e); 2328; and 2343)

§ 403.191 What are the requirements for program evaluation?

(a) (1) Beginning in the 1992–1993 school year, each recipient of financial assistance under §§ 403.112, 403.113, or 403.116 shall evaluate annually the effectiveness of the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60, or a special program listed in § 403.130, unless the State board determines pursuant to § 403.201(a)(3) that a broader evaluation is required. A recipient may conduct the evaluation required under this paragraph by evaluating either the entire population of participants or a representative sample of participants.

(2) The annual evaluation must be based on the standards and measures developed by the State board in accordance with §§ 403.201 and 403.202, including any modifications made by the recipient in accordance with paragraph (b) of this section.

(b) (1) Each recipient may modify the State standards and measures based on—

(i) Economic, geographic, or demographic factors; or

(ii) The characteristics of the populations to be served.

(2) Modifications must conform to the assessment criteria contained in the State plan.

(c) Each recipient, as part of the annual evaluation required in paragraph (a) of this section, and with the full participation of representatives of special populations, shall—

(1) Identify and adopt strategies to overcome barriers that are resulting in lower rates of access to, or success in, vocational education programs for members of special populations; and

(2) Evaluate the progress of individuals who are members of special populations.

(d) Each recipient, as a part of the annual evaluation required in paragraph (a) of this section, shall evaluate its progress in providing vocational education students with strong experience in and understanding of all aspects of the industries the students are preparing to enter.

(e) Each recipient may use funds awarded under a basic program listed in § 403.60 or a special program listed in § 403.130 to support the cost of conducting the evaluation required under paragraphs (a) through (d) of this section to the extent that the costs are—

(1) Reasonable and necessary;

(2) Related to the purposes for which the funds were awarded; and

(3) Consistent with applicable requirements, such as the requirement in § 403.196 to use funds awarded under Title II of the Act to supplement, and not to supplant, State and local funds.

(Authority: 20 U.S.C. 2325(a) and 2327(a))

§ 403.192 What are the requirements for program improvement?

(a) If, beginning not less than one year after implementing the program evaluation required in § 403.191, a recipient determines, through its annual evaluation, that it is not making substantial progress in meeting the standards and measures developed by the State under §§ 403.201 and 403.202, the recipient shall develop a plan for program improvement for the succeeding school year.

(b) The plan must be developed in consultation with teachers, parents, and students concerned with or affected by the program, and must describe how the recipient will identify and modify projects, services, and activities receiving assistance under the programs listed in §§ 403.60 and 403.130 that are in need of improvement, including a description of—

(1) Vocational education and career development strategies designed to achieve progress in improving the effectiveness of the recipient's projects, services, and activities receiving assistance under the programs listed in §§ 403.60 and 403.130 evaluated under § 403.191(a)(1); and

(2) If necessary, the strategies designed to improve supplementary services provided to individuals who are members of special populations.

Cross Reference: See 34 CFR 403.204.

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(Authority: 20 U.S.C. 2327(b))

§ 403.193 What are the information requirements regarding special populations?

(a) (1) Each local educational agency that receives funds under Title II of the Act shall provide to students who are members of special populations and their parents information concerning—

(i) The opportunities available in vocational education;

(ii) The requirements for eligibility for enrollment in those vocational education programs;

(iii) Special courses that are available;

(iv) Special services that are available;

(v) Employment opportunities; and

(vi) Placement.

(2) Each area vocational education school or intermediate educational agency that receives funds under Title II of the Act shall provide the information described in paragraph (a)(1) of this section to the students who are members of special populations and their parents in any local educational agency whose allocation was distributed in its entirety under § 403.113 to the area vocational education school or intermediate educational agency.

(b) The information described in paragraph (a)(1) of this section must be provided at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(c) Each eligible institution that receives funds under Title II of the Act shall—

(1) Provide the information described in paragraph (a)(1) of this section to each individual who requests information concerning, or seeks admission to, vocational education programs offered by the institution; and

(2) If appropriate, assist in the preparation of applications relating to that admission.

(d) Information described under paragraph (a)(1) of this section must, to the extent practicable, be in a language and form that parents and students understand.

(e) An eligible recipient is not required by this part to use non-Federal funds to pay the cost of services and activities required by this section and §§ 403.111(a)(2)(i) and (c)(3) and 403.190(b) unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328(b) and (c) and 2342(a) and (c)(1)(C))

§ 403.194 What are the comparability requirements?

(a) A local educational agency may receive an award of Federal funds under the State plan only if—

(1) The local educational agency uses State and local funds to provide services in secondary schools or sites served with Federal funds awarded under the State plan that, taken as a whole, are at least comparable to those services being provided in secondary schools or sites that are not being served with Federal funds awarded under the State plan; or

(2) In the event that the local educational agency serves all its

secondary schools or sites with Federal funds awarded under the State plan, the local educational agency uses State and local funds to provide services that, taken as a whole, are substantially comparable in each secondary school or site.

Cross-Reference: See Appendix B to Part 403.

(b) The comparability requirements in paragraph (a) of this section do not apply to—

(1) A local educational agency with only one secondary school or site; or

(2) A consortium composed of more than one local educational agency, except that, within a consortium, each local educational agency itself must meet the comparability requirements unless it is exempt under paragraph (b)(1) of this section.

(c) (1) A local educational agency shall develop written procedures for complying with the comparability requirements in paragraph (a) of this section, including a process for demonstrating annually that State and local funds are used to provide services in served schools and sites that are at least comparable to the services provided with State and local funds in schools or sites in the local educational agency that are not served with funds awarded under the State plan.

(2) In reaching the determination as to whether comparability requirements in paragraph (a) of this section were met, the local educational agency's written procedures—

(i) Do not have to take into account unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year; and

(ii) May not take into account any State and local funds spent in carrying out the following types of programs:

(A) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(1)(B) of chapter 1 (20 U.S.C. 2728(d)(1)(B)).

(B) Bilingual education for children of limited English proficiency.

(C) Special education for children with disabilities.

(D) State phase-in programs that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(2)(B) of Chapter 1 (20 U.S.C. 2728(d)(2)(B)).

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(Authority: 20 U.S.C. 2323(b)(19))

§ 403.195 What are the administrative cost requirements applicable to local recipients?

(a) Except as provided in paragraphs (b) and (c) of this section, each eligible recipient, including a State corrections educational agency, that receives an award under a basic program listed in § 403.60 or a special program listed in § 403.130, may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award was made.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or § 403.116 may use no more than five percent of those funds for administrative costs.

(c) Each eligible partner that receives an award under the Business-Labor-Education Partnership for Training Program may use no more funds under that award for administrative costs than the amounts prescribed in § 403.173(b).

(Authority: 20 U.S.C. 2342(c); 2393(a)(1) and (c))

§ 403.196 What are the requirements regarding supplanting?

(a) Funds made available under Title II of the Act must be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of funds under Title II of the Act be made available for the purposes specified in the State plan and the local application.

(b) Notwithstanding paragraph (a) of this section and § 403.32(a)(17), funds made available under Title II of the Act may be used to pay the costs of vocational education services required by an individualized education program developed pursuant to sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)), in a manner consistent with section 614(a)(1) of that Act, and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to vocational education.

(c) Any expenditures pursuant to paragraph (b) of this section must increase the amount of funds that would otherwise be available to meet the costs of an individualized education program or to comply with section 504 of the Rehabilitation Act of 1973.

(Authority: 20 U.S.C. 2468e(a)(1))

§ 403.197 What are the requirements for the use of equipment?

(a) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased, may be used for other vocational education purposes if the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(b) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased or other vocational education purposes, may be used for other instructional purposes if—

(1) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program; and

(2) The other use of the equipment is after regular school hours or on weekends.

(c) The use of equipment under paragraphs (a) and (b) of this section must—

(1) Be incidental to the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased;

(2) Not interfere with the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased; and

(3) Not add to the cost of using that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased.

(Authority: 20 U.S.C. 2342(c)(3))

Subpart I—What are the Administrative Responsibilities of a State under the State Vocational and Applied Technology Education Program?

§ 403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?

(a) The State board may not make a payment under the Act to a local educational agency unless the LEA is in compliance with § 403.194. As indicated in § 403.194(a), an LEA may demonstrate its compliance with the comparability requirements by filing an appropriate assurance.

(b) The State board shall monitor each local educational agency's compliance

with the comparability requirements in § 403.194.

(c) If, after a local educational agency receives an award of Federal funds under the State plan, the local educational agency is found not to be in compliance with the comparability requirements, the State board shall—

(1) Withhold all or a portion of the local educational agency's grant award, but not less than the amount or percentage by which the local educational agency failed to achieve comparability under the local educational agency's procedures established pursuant to § 403.194(c); or

(2) Require repayment of the amount or percentage by which the local educational agency failed to achieve comparability if the local educational agency is found not to be in compliance after the period of availability of the funds awarded has ended.

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?

(a) (1) Each State board receiving funds under the Act shall develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) This system must—

(i) Be developed and implemented by September 25, 1992; and

(ii) Apply to all programs assisted under the Act.

(3) The State board must determine whether a recipient of funds under §§ 403.112, 403.113, or § 403.116 must evaluate more than the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60 or a special program listed in § 403.130 in order to carry out a valid, reliable, and otherwise meaningful evaluation of the effectiveness of these projects, services, and activities as required by § 403.191(a)(1), using the standards and measures developed pursuant to paragraph (a)(1) of this section.

(4) If a State board determines under paragraph (a)(3) of this section that a recipient must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program, the State board shall—

(i) Determine whether the entire local vocational education program—or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic program or a special program; and

(ii) Require a recipient to conduct an evaluation consistent with the State board's determination under paragraph (a)(4)(i) of this section.

(b) To assist in the development and implementation of the Statewide system addressed in paragraph (a) of this section, the State board shall appoint a State Committee of Practitioners (Committee), as prescribed in 34 CFR 400.6.

(c) The State board shall convene the Committee on a regular basis to review, comment on, and propose revisions to the State board's draft proposal for a system of core standards and measures of performance for vocational education programs assisted under the Act.

(d) To assist the Committee in formulating recommendations for modifying standards and measures of performance, the State board shall provide the Committee with information concerning differing types of standards and measures including—

(1) The advantages and disadvantages of each type of standard or measure; and

(2) Instances in which those standards and measures—

(i) Have been effective; and

(ii) Have not been effective.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2325(a) and (d))

§ 403.202 What must each State's system of core standards and measures of performance include?

(a) The statewide system of core standards and measures of performance for vocational education programs must include—

(1) Measures of learning and competency gains, including student progress in the achievement of basic and more advanced academic skills;

(2) One or more measures of the following:

(i) Student competency attainment.

(ii) Job or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared, including occupational skills in the industry the student is preparing to enter.

(iii) Retention in school or completion of secondary school or its equivalent.

(iv) Placement into additional training or education, military service, or employment;

(3) Incentives or adjustments that are—

(i) Designed to encourage service to targeted groups or special populations; and

(ii) Developed for each student, and, if appropriate, consistent with the student's individualized education program developed under section 614(a)(5) of the IDEA; and

(4) Procedures for using existing resources and methods developed in other programs receiving Federal assistance.

(b) In developing the standards and measures included in the system developed under paragraph (a) of this section, the State board shall take into consideration and shall provide, to the extent appropriate, for consistency with—

(1) Standards and measures developed under job opportunities and basic skills training programs established and operated under a plan approved by the Secretary of Health and Human Services that meets the requirements of section 402(a)(19) of the Social Security Act (42 U.S.C. 687); and

(2) Standards prescribed by the Secretary of Labor under section 106 of the JTPA.

Cross-Reference: See 34 CFR 400.6.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2325(b), (c))

§ 403.203 What are the State's responsibilities for a State assessment?

(a) Each State board receiving assistance under the Act shall conduct an assessment of the quality of vocational education programs throughout the State using measurable objective criteria.

(b) In developing the assessment criteria, the State board shall—

(1) Consult with representatives of the groups described in 34 CFR 400.6(c); and

(2) Use information gathered by the National Occupational Information Coordinating Committee and, if appropriate, other information.

(c) Each State board shall—

(1) Develop assessment criteria no later than the beginning of the 1991–1992 school year; and

(2) Widely disseminate those criteria.

(d) Assessment criteria must include at least the following factors, but may include others:

(1) Integration of academic and vocational education.

(2) Sequential courses of study leading to both academic and occupational competencies.

(3) Increased student work skill attainment and job placement.

(4) Increased linkages between secondary and postsecondary educational institutions.

(5) Instruction and experience, to the extent practicable, in all aspects of an industry the students are preparing to enter.

(6) The ability of the eligible recipients to meet the needs of special populations with respect to vocational education.

(7) Raising the quality of vocational education programs in schools with a high concentration of poor and low-achieving students.

(8) The relevance of programs to the workplace and to the occupations for which students are to be trained, and the extent to which those programs reflect a realistic assessment of current and future labor market needs, including needs in areas of emerging technologies.

(9) The ability of the vocational curriculum, equipment, and instructional materials to meet the demands of the work force.

(10) Basic and higher order current and future workplace competencies that will reflect the hiring needs of employers.

(11) The capability of vocational education programs to meet the needs of individuals who are members of special populations.

(12) Other factors considered appropriate by the State board.

(e) The assessment must include an analysis of—

(1) The relative academic, occupational, training, and retraining needs of secondary, adult, and postsecondary students; and

(2) The capability of vocational education programs to provide vocational education students, to the extent practicable, with—

(i) Strong experience in, and understanding of, all aspects of the industry the students are preparing to enter (including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, and health, safety, and environmental issues); and

(ii) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of mathematics, reading, writing, science, and social studies) in a technological setting.

(f) (1) Each State board shall complete the initial assessment required by paragraph (a) of this section before March 25, 1991, and, therefore, at least six months prior to the required submission of a new State plan to the Secretary.

(2) Each State board shall conduct an assessment under this section prior to the submission of each new State plan to the Secretary.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2323(a)(3), (b)(3)(B), and 2326)

§ 403.204 What are the State's responsibilities for program evaluation and improvement?

(a) If, one year after an eligible recipient has implemented its program improvement plan described in § 403.192, the State finds that the eligible recipient has not made sufficient progress in meeting the standards and measures developed as required by §§ 403.201 and 403.202, the State shall work jointly with the recipient and with teachers, parents, and students concerned with or affected by the program, to develop a joint plan for program improvement.

(b) Each joint plan required by paragraph (a) of this section must contain—

(1) A description of the technical assistance and program activities the State will provide to enhance the performance of the eligible recipient;

(2) A reasonable timetable to improve school performance under the plan;

(3) A description of vocational education strategies designed to improve the performance of the program as measured by the local evaluation; and

(4) If necessary, a description of strategies designed to improve supplementary services provided to individuals who are members of special populations.

(c) The State, in conjunction with the eligible recipient, shall annually review and revise the joint plan developed under paragraph (a) of this section and provide appropriate assistance until the recipient sustains fulfillment of State and local standards and measures developed under §§ 403.201 and 403.202 for more than one year.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2327(c), (d))

§ 403.205 What are the State's responsibilities for members of special populations?

The State board shall—

(a) Establish effective procedures, including an expedited appeals procedure, by which students who are members of special populations and their parents, teachers, and concerned area residents will be able to participate directly in State and local decisions that influence the character of programs under the Act affecting their interests; and

(b) Provide technical assistance and design procedures necessary to ensure that those individuals referred to in paragraph (a) of this section are given access to the information needed to use those procedures.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2328(d))

§ 403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State that will meet the common needs for the planning for, and the operation of, programs of the State board assisted under the Act and of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Authority: 20 U.S.C. 2422(b))

§ 403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Authority: 20 U.S.C. 2404(c))

§ 403.208 What are the requirements regarding supplanting?

(a) The State board is subject to the prohibition against supplanting in § 403.196.

(b) The State board shall monitor each eligible recipient's compliance with the supplanting requirements in § 403.196.

(Authority: 20 U.S.C. 2468e(a)(1))

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Illustration of providing full participation under 34 CFR 403.111(a). An educationally disadvantaged student is enrolled in a course that is part of a vocational education program and is having trouble understanding a math concept (e.g., negative numbers) necessary to succeed in the course. To ensure the student's full participation in the course, a local educational agency may use funds awarded under § 403.112 as needed to provide tutoring in negative numbers to enable the student to understand the concept well enough to complete the vocational education course.

Illustrations of providing equitable participation under 34 CFR 403.111(c)(3).

Example 1: An area vocational education school conducts an informal meeting to provide the information required in § 403.193(a) regarding the area vocational education school's vocational education programs, to parents of students who are members of special populations in a local educational agency whose allocation was distributed to the area vocational education school under § 403.113. The area vocational education school conducts the meeting at a time and in a location convenient for these parents and students. At the meeting, the area vocational education school provides a staff person to assist students or their parents to complete any forms necessary to enroll in the area vocational education school's vocational education program.

Example 2: A hearing-impaired student in a local educational agency could participate in the vocational education program only if an interpreter is provided for that student. The local educational agency cannot refuse to admit the student because of the need for an interpreter.

Appendix B to Part 403—Examples for 34 CFR 403.194—Comparability Requirements

Methods by which a local educational agency can demonstrate its compliance with the comparability requirements in 34 CFR 403.194(a) include the following:

Example 1: The local educational agency files with the State board a written assurance that it has established and implemented—

(a) A district-wide salary schedule;

(b) A policy to ensure equivalence among secondary schools or sites in teachers, administrators, and auxiliary personnel; and

(c) A policy to ensure equivalency among secondary schools or sites in the provision of curriculum materials and instructional supplies.

Example 2: The local educational agency establishes and implements other procedures for ensuring comparability, such as the following:

(a) Comparing the average number of students per instructional staff in each secondary school or site served with Federal funds awarded under the State plan with the average number of students per instructional staff in secondary schools or sites not served with Federal funds awarded under the State plan. A served school is considered comparable if its average does not exceed 110 percent of the average of schools or sites in the local educational agency not served with Federal funds awarded under the State plan; or

(b) Comparing the average instructional staff salary expenditures per student in each secondary school or site served with Federal funds awarded under the State plan with the average instructional staff salary expenditure per student in schools or sites in the local educational agency not served with Federal funds awarded under the State plan. A served school is considered comparable if its average is at least 90 percent of the average of schools or sites not served with Federal funds awarded under the State plan.

PART 404—[RESERVED]

6. Part 404 is [Reserved].

7. A new part 405 is added to read as follows:

PART 405—NATIONAL TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.

405.1 What is the National Tech-Prep Education Program?
405.2 Who is eligible for an award?
405.3 What activities may the Secretary fund?
405.4 What regulations apply?
405.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

405.10 What must the application contain?

Subpart C—How Does the Secretary Make an Award?

405.20 How does the Secretary evaluate an application?
405.21 What selection criteria does the Secretary use?
405.22 What additional factor does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

405.30 What are the evaluation requirements?
405.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 405.1 What is the National Tech-Prep Education Program?

The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and provides, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§ 405.2 Who is eligible for an award?

(a) Awards are provided to consortia described in 34 CFR 406.30.

(b) Members of a consortium shall—

(1) Apply jointly to the Secretary for funds; and

(2) Enter into an agreement, in the form of a single document signed by all members, designating one member of the consortium as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

Cross-Reference: See 34 CFR 75.127–75.129—Group Applications.

(Authority: 20 U.S.C. 2394a(a))

§ 405.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for projects to develop and operate a four-year tech-prep education program.

(b) Each project assisted under this part must meet the requirements in 34 CFR 406.3(b) (1) through (7) and may also perform the activities described in 34 CFR 406.3(c).

(Authority: 20 U.S.C. 2394a(a) and 2394b)

§ 405.4 What regulations apply?

The following regulations apply to the National Tech-Prep Education Program:

(a) The regulations in this part 405.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.5 What definitions apply?

The definitions in 34 CFR 406.5 apply to this part.

(Authority: 20 U.S.C. 2394e)

Subpart B—How Does One Apply for an Award?

§ 405.10 What must the application contain?

The application must contain—

(a) An articulation agreement between the participants in a consortium;

(b) A three-year plan for the development and implementation of project requirements under § 405.3;

Cross-Reference: See 34 CFR 75.117.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(c) A copy of the transmittal letters the consortium sent to the State educational agency and the State agency for higher education of the State in which the consortium is located in order to notify those agencies that the consortium has submitted an application to the Secretary and to provide those

agencies with a copy of the consortium's application; and

(d) Information that indicates whether the consortium is composed of either urban participants or rural participants.

(Authority: 20 U.S.C. 2394b(b)(1) and 2394c (a), (b), (e), and (f))

Subpart C—How Does the Secretary Make an Award?

§ 405.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 405.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 405.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the Federal Register, the Secretary may assign the reserved 15 points among the criteria in § 405.21.

(e) The Secretary awards up to five points to applications that—

(1) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs. Acceptable documentation of employment placement includes letters of commitment from employers to hire individuals who complete the program;

(2) Are developed in consultation with business, industry, and labor unions; and

(3) Address effectively the issues of dropout prevention and re-entry and the needs of minority youths, youths of limited English proficiency, youths with disabilities, and disadvantaged youths.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The proposed project demonstrates the need for and the soundness of the rationale for developing a tech-prep education program between or among the consortium participants;

(2) The proposed project will provide tech-prep education that is designed to meet current and projected occupational needs;

(3) The proposed project demonstrates that course offerings will have a strong relationship between mathematics, science, and communication and technical preparation in engineering technology, applied science, mechanical, industrial or practical art or trade, agriculture, health, or business in both the secondary and postsecondary or apprenticeship programs;

(4) The articulation agreement between the participants in the consortium is appropriate to the needs and resources of the consortium participants;

(5) The in-service training for teachers is designed to train teachers to implement tech-prep education program curricula effectively;

(6) The training activities for counselors are designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment; and

(7) Preparatory services are provided that assist all populations to participate in tech-prep education programs.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed tech-prep education program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs, including the military; and

(iv) Successful transfer of students to a variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, including whether the design will result in the project being developed, implemented, operated, and demonstrated within the grant period;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project between or among consortium participants over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective;

(6) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(7) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project

activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the project requirements, of the project director;

(ii) The qualifications, in relation to the project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire tech-prep education program equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2394-2394e)

§ 405.22 What additional factor does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 405.21, the Secretary determines whether the most highly rated applications are equitably distributed between consortia of urban participants and consortia of rural participants.

(b) The Secretary may select other applications for funding if doing so would improve the urban and rural distribution of projects funded under this program.

(Authority: 20 U.S.C. 2394c(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 405.30 What are the evaluation requirements?

(a) Each grantee must provide and budget for an independent evaluation of grant activities.

(b) The evaluation shall be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(f) Reports documenting evaluation activities must be included as appendices to the grant recipient's annual and final performance reports.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2394-2394e)

§ 405.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2394-2394e)

8. A new part 406 is added to read as follows:

PART 406—STATE-ADMINISTERED TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.

406.1 What is the State-Administered Tech-Prep Education Program?
406.2 Who is eligible for an award?
406.3 What activities may the Secretary fund?
406.4 What regulations apply?
406.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

406.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

406.20 How does the Secretary make allotments?
406.21 How does the Secretary make reallotments?

Subpart D—What Conditions Must be Met After a State Receives an Award?

406.30 Who is eligible to apply to a State for an award?
406.31 How does a State carry out the State-Administered Tech-Prep Education Program?
406.32 What are the local application requirements?
406.33 What are the reporting requirements?

Authority: 20 U.S.C. 2394-2394e, unless otherwise noted.

Subpart A—General

§ 406.1 What is the State-Administered Tech-Prep Education Program?

If the annual appropriation for tech-prep education exceeds $50,000,000, the State-Administered Tech-Prep Education Program provides financial assistance for—

(a) Planning and developing four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) Planning and developing, in a systematic manner, strong, comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§ 406.2 Who is eligible for an award?

A State board of vocational education (State board) in the fifty States, Puerto Rico, the District of Columbia, or the Virgin Islands is eligible for an allotment under this program.

(Authority: 20 U.S.C. 2394a(b))

§ 406.3 What activities may the Secretary fund?

(a) The Secretary makes allotments to State boards to provide funding for consortia described in § 406.30 for tech-prep education projects.

(b) A State board assists projects that must—

(1) Be carried out under an articulation agreement between the members of the consortium;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship training program of at least two years following secondary instruction, with a common core of required proficiency in mathematics, science, communications, and technologies designed to lead to an associate degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the consortium participants;

(4) Include in-service training for teachers that—

(i) Is designed to train teachers to implement tech-prep education program curricula effectively;

(ii) Provides for joint training for teachers from all participants in the consortium; and

(iii) May provide training on weekends, evenings, or during the summer in the form of sessions, institutes, or workshops;

(5) Include training activities for counselors designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment;

(6) Provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals so that these individuals have an opportunity to enter tech-prep education that is equal to the opportunity afforded to the general student population; and

(7) Provide preparatory services that assist all populations to participate in tech-prep education programs.

(c) A project assisted under this part may also—

(1) Provide for the acquisition of tech-prep education program equipment; and

(2) Acquire, as part of the planning activities of the tech-prep education program, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

(Authority: 20 U.S.C. 2394a, 2394b)

§ 406.4 What regulations apply?

The following regulations apply to the State-Administered Tech-Prep Education Program:

(a) The regulations in this part 406.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 406.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Articulation agreement means a commitment to a program designed to provide students with a non-duplicative sequence of progressive achievement leading to competencies in a tech-prep education program.

Community college—

(1) Has the meaning provided in 34 CFR 400.4 for the term *Institution of higher education* for an institution that provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree; and

(2) Includes tribally controlled community colleges.

Institution of higher education includes an institution offering apprenticeship programs of at least two years beyond the completion of secondary school, and includes, in addition to the institutions covered by the definition of the term *institution of higher education* in 34 CFR 400.4, a—

(1) Proprietary institution of higher education;

(2) Postsecondary vocational institution;

(3) Department, division, or other administrative unit in a college or university that provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to be an equivalent degree, or to a graduate degree in nursing; and

(4) Department, division, or other administrative unit in a junior college, community college, college, or university that provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or an equivalent degree.

Tech-prep education program means a combined secondary and postsecondary program that—

(1) Leads to an associate degree or two-year certificate;

(2) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(3) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(4) Leads to placement in employment.

(Authority: 20 U.S.C. 1088 and 2394e)

Subpart B—How Does a State Apply for a Grant?

§ 406.10 What must the State application contain?

To receive a grant under this program, a State board shall submit an application to the Secretary at such time, in such manner, as the Secretary prescribes. The State board may submit an application along with the State plan submitted in accordance with 34 CFR 403.30. The application must include a description of—

(a) The requirements for State board approval of funding of a local tech-prep education project, including—

(1) Whether the State board intends to make awards on a competitive basis or on the basis of a formula; and

(2) If a formula is to be used, a description of that formula;

(b) How the State board will perform the following:

(1) Approve applications based on their potential to create an effective tech-prep education program as described in § 406.3(b).

(2) Give special consideration to applicants that—

(i) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs;

(ii) Are developed in consultation with business, industry, and labor unions; and

(iii) Address effectively the issues of dropout prevention and re-entry and the needs of minority youth of limited English proficiency, youth with disabilities, and disadvantaged youth;

(3) Ensure an equitable distribution of assistance between urban and rural consortium participants;

(c) How the State board will ensure that local recipients meet the requirements of this program; and

(d) How activities under this program will be coordinated with other tech-prep education programs, services, and activities provided under the State plan.

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2394c (b)-(e))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 406.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 101(a)(2) of the Act.

(Authority: 20 U.S.C. 2394a(b)(1))

§ 406.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 406.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the Federal Register the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(a) and (d) and 2394a(b)(1))

Subpart D—What Conditions Must Be Met After a State Receives an Award?

§ 406.30 Who is eligible to apply to a State for an award?

(a) A State board shall provide subgrants or contracts to consortia between—

(1) A local educational agency, intermediate educational agency, area vocational education school serving secondary school students, or secondary school funded by the Bureau of Indian Affairs; and

(2) A nonprofit institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5, including institutions receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*);

(ii) Is not prohibited from receiving assistance under Part B of the Higher Education Act of 1965 pursuant to the provisions of section 435(a)(3) of that Act; and

(iii) Offers a two-year associate degree program, a two-year certificate program, or a two-year apprenticeship training program that follows secondary instruction; or

(3) A proprietary institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5;

(ii) Is not subject to a default management plan required by the Secretary; and

(iii) Offers a two-year associate degree program.

(b) A consortia must include at least one entity from paragraph (a)(1) of this section and at least one entity from either paragraph (a)(2) or (a)(3) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2394a)

§ 406.31 How does a State carry out the State-Administered Tech-Prep Education Program?

(a) A State board carries out the program by—

(1) Providing State administration of its grant; and

(2) Awarding subgrants or contracts to eligible consortia on a competitive basis or on the basis of a formula determined by the State board.

(b) A State board may use funds reserved under 34 CFR 403.180(b)(3) to provide support for the State-administered Tech-Prep Education Program.

(c) A State board may use no more than the amount of funds from its award under this part that is necessary and reasonable for—

(1) The proper and efficient administration of this program; and

(2) Technical assistance to promote or enhance the quality and effectiveness of the State's tech-prep education program.

(Authority: 20 U.S.C. 2331(c)(2); 2394a(b))

§ 406.32 What are the local application requirements?

(a) Each consortium that desires to receive an award shall submit an application to the State board.

(b) The application must be submitted at the time and contain the information prescribed by the State board, and must contain—

(1) An articulation agreement between the participants in the consortium; and

(2) A three-year plan for the development and implementation of activities under this part.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2394c(a)-(b))

§ 406.33 What are the reporting requirements?

The State board shall, in conjunction with recipients of subgrants and contracts, with respect to assistance received under this part, submit to the Secretary reports as may be required by the Secretary to ensure that grantees are complying with the requirements of this part.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2394a-2394e)

9. Part 407 is revised to read as follows:

PART 407—SUPPLEMENTARY STATE GRANTS PROGRAM

Subpart A—General

Sec.

407.1 What is the Supplementary State Grants Program?
407.2 Who is eligible for an award?
407.3 What activities may the Secretary fund?
407.4 What regulations apply?
407.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

407.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

407.20 How does the Secretary make allotments?
407.21 How does the Secretary make reallotments?
407.22 How does a State carry out this program?

Subpart D—How Does an Applicant Apply to a State for an Award?

407.30 Who is eligible to apply to a State for an award?
407.31 How are funds to be used by local agencies?
407.32 What are the local application requirements?
407.33 How does a State make allotments?

Authority: 20 U.S.C. 2395–2395e, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Supplementary State Grants Program?

The Supplementary State Grants Program provides financial assistance for vocational education program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act.

(Authority: 20 U.S.C. 2395)

§ 407.2 Who is eligible for an award?

A State board for vocational education (State board) in the fifty States, the District of Columbia, or Puerto Rico is eligible for awards under this program.

(Authority: 20 U.S.C. 2395a)

§ 407.3 What activities may the Secretary fund?

Under the Supplementary State Grants Program, the Secretary makes grants or cooperative agreements to a State board to provide funding to eligible local educational agencies (LEAs) in economically depressed areas for program improvement activities described in § 407.32.

(Authority: 20 U.S.C. 2395–2395a)

§ 407.4 What regulations apply?

The following regulations apply to the Supplementary State Grants Program:

(a) The regulations in this Part 407.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2395–2395e)

§ 407.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2395–2395e)

Subpart B—How does a State Apply for a Grant?

§ 407.10 What must the State application contain?

(a) To receive a grant under the Supplementary State Grants Program, a State board shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. The State board may submit an application along with the State plan submitted in accordance with 34 CFR 403.30. The application must—

(1) Designate the sole State agency described in 34 CFR 403.10 as the State agency responsible for the administration and supervision of activities carried out with assistance under this program;

(2) Provide for a process of consultation with the State council established under 34 CFR 403.18;

(3) Describe how funds will be allocated in a manner consistent with § 407.33;

(4) Provide for an annual submission of data concerning the use of funds and students served with assistance under this program;

(5) Provide that the State board will keep records and provide information to the Secretary as may be required for purposes of financial audits and program evaluations; and

(6) Contain an assurance that the State board will comply with the requirements of this part.

(b) An application submitted by the State board under paragraph (a) of this section must be for a period of not more than three years and must be amended annually.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2395d)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 407.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant for a given fiscal year according to the provisions in section 352 of the Act.

(Authority: 20 U.S.C. 2395a)

§ 407.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 407.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purpose for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2395a and 2821)

§ 407.22 How does a State carry out this program?

(a) A State carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding 100 percent of the amounts made available under this program to eligible LEAs.

(b) A State may not use program funds for the technical assistance costs and administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(Authority: 20 U.S.C. 2312(a) and 2395b(a))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 407.30 Who is eligible to apply to a State for an award?

(a) An LEA is eligible to apply to the State board for an allocation if the LEA received an award under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712).

(b) A consortium of the LEAs described in paragraph (a) of this section is also eligible to apply to the State board for an award.

(Authority: 20 U.S.C. 2395b(b))

§ 407.31 How are funds to be used by local agencies?

Each LEA or consortium of LEAs that receives a grant under this program—

(a) Shall give first priority to using funds provided under the grant for improving facilities and acquiring or leasing equipment for carrying out vocational education programs that are in economically depressed areas in which economically and educationally disadvantaged individuals are served, and that receive assistance under the Act;

(b) May use any funds not required to carry out the provisions of paragraph (a) of this section for other vocational education program improvement activities, such as curriculum development or teacher training; and

(c) May use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of projects, services, and activities for which the award was made.

(Authority: 20 U.S.C. 2395c)

§ 407.32 What are the local application requirements?

Each LEA or consortium of LEAs that desires to receive a grant under this program shall submit to the State board an application at the time, in the manner, and containing or accompanied by any information the State board may reasonably require, including evidence that the requirement in § 407.31(a) is being met.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2395e)

§ 407.33 How does a State make allotments?

(a) *General rule.* In each fiscal year for which a State board receives a grant under this program, the State board shall allot to each eligible LEA or consortium of LEAs in the State an amount under this program that bears the same relationship to the total funds available to the State under § 407.20 as the amount allotted to that LEA or those LEAs under section 1006 of chapter 1 bears to the aggregate amount allotted to LEAs in the State under section 1006 of chapter 1 in the fiscal year in which distribution is made.

(b) *Exception to the general rule.* In applying the provisions in paragraph (a) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (a) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(Authority: 20 U.S C. 2395b(b))

10. Part 408 is revised to read as follows:

PART 408—COMMUNITY EDUCATION EMPLOYMENT CENTERS PROGRAM

Subpart A—General

Sec.

408.1 What is the Community Education Employment Centers Program?
408.2 Who is eligible for an award?
408.3 What activities may the Secretary fund?
408.4 What regulations apply?
408.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

408.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

408.20 What awards does the Secretary make?
408.21 How does the Secretary evaluate an application?
408.22 What selection criteria does the Secretary use?
408.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

408.30 What are the requirements regarding support services?
408.31 What are the requirements regarding a parent/community coordinator?
408.32 What are the requirements regarding a Council of Advisors?
408.33 What are the requirements regarding other center personnel?
408.34 What are the evaluation requirements?

Authority: 20 U.S.C. 2396, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Community Education Employment Centers Program?

The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

(Authority: 20 U.S.C. 2396 and 2396a)

§ 408.2 Who is eligible for an award?

(a) A public secondary school or area vocational education school is eligible for an award under the Community Education Employment Centers Program if the school—

(1) Is located in or serves one or more local educational agencies that are eligible for assistance under section 1006 of chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712); and

(2) Demonstrates that it will serve a student population that is predominantly educationally and economically disadvantaged.

(b) For purposes of paragraph (a)(2) of this section, an eligible recipient is considered to be serving—

(1) A predominately educationally disadvantaged population if over 75 percent of the students to be served are individuals—

(i) Who score at or below the 25th percentile on a standardized achievement or aptitude test;

(ii) Whose secondary school grades are below 2.0 on a 4.0 scale (grade "A" equals 4.0); or

(iii) Who fail to attain minimal academic competencies; and

(2) A predominately economically disadvantaged population if over 75 percent of the students to be served can be classified as economically disadvantaged individuals according to the definition of that term in 34 CFR 400.4.

(Authority: 20 U.S.C. 2396f and 2396i(1))

§ 408.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for community education employment centers.

(b) Each project assisted by the Secretary must—

(1) Operate a community education employment center on an extended year and extended day basis;

(2) Establish a collegial working environment, with substantial opportunities for staff training and development and shared decision-making;

(3) Maintain small class sizes, and to the extent possible, maintain an average class size of 15 students or fewer;

(4) Offer a broad array of secondary school course-work, including, to the extent possible—

(i) English, mathematics, history, geography, biology, chemistry, physics, and computer science;

(ii) Opportunities for student participation in a wide range of extracurricular activities, including community service and exploration, sports, fine and performing arts, and tutorial study sessions;

(iii) A comprehensive vocational-technical education program that—

(A) Was developed through regular consultation with employer-labor panels with knowledge of relevant industries; and

(B) Offers skills in planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, economic development and health, safety, and environment issues; and

(iv) Courses in health, nutrition, and parenting;

(5) Offer students on-site opportunities for assistance with career planning and decision-making, employability, entrepreneurial abilities, interpersonal communication skills, and remedial studies;

(6) Maintain an emphasis on the development of academic skills, regardless of student career objectives;

(7) Provide technical assistance and training to staff from other schools and local educational agencies within the State that wish to replicate community education employment center capabilities;

(8) Seek to use community organizations to provide support for educational activities and services to parents and students;

(9) Offer school-to-work transition services;

(10) Establish a support system to coordinate services for students as described in § 408.30;

(11) Meet the requirements regarding center personnel in §§ 408.31 and 408.33; and

(12) Meet the requirements regarding a Council of Advisors in § 408.32.

(c) Projects assisted by the Secretary under this part may organize community education employment centers into one or more programs specializing in different areas of study of particular interest and employment opportunities for the student population.

(Authority: 20 U.S.C. 2396b, 2396c, and 2396d(a))

§ 408.4 What regulations apply?

The following regulations apply to the Community Education Employment Centers Program:

(a) The regulations in this part 408.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Parent includes a legal guardian or other person standing in loco parentis.

(Authority: 20 U.S.C. 2396i)

Subpart B—How Does One Apply for an Award?

§ 408.10 What must an application contain?

An application must—

(a) Contain information demonstrating that the area where the center is to be located has a high concentration of children from low-income families, relative to the county and State as a whole, such as proof of eligibility for an award under section 1006 of the Elementary and Secondary Education Act;

(b) Describe the activities and services for which assistance is sought;

(c) Describe how the applicant will comply with the provisions of §§ 408.2, 408.3, and 408.30 through 403.34;

(d) Provide assurances that the State and local educational agencies in which the applicant is located or serves will, in any fiscal year, supply at least the same fiscal effort per student, with respect to the provision of free public education, to community education employment center students as the local educational agency provides for students attending secondary schools in the local educational agency;

(e) Describe how the applicant will use funding available from appropriate employment, training, and education programs in the State in order to provide a maximum amount of resources for instructional and student services; and

(f) Provide assurances that the community education employment center will coordinate the operations of the center with local postsecondary institutions, business, industry, labor, and other appropriate public and private community agencies in order to help meet local economic needs.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2396g)

Subpart C—How Does the Secretary Make an Award?

§ 408.20 What awards does the Secretary make?

The Secretary makes awards to establish and operate not more than 10 community education employment centers for up to five years.

(Authority: 20 U.S.C. 2396a)

§ 408.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 408.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 408.22.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The center will be located in an urban or rural area that has a high concentration of children from low-income families, relative to the county and State as a whole;

(2) Activities and services will be provided to low-income urban and rural youth with education, skills, and the enrichment necessary to ensure graduation from secondary school, transition from secondary school to postsecondary school, or employment;

(3) Proposed activities will be coordinated with the entities listed in § 408.10(f) to ensure that the operations of the community education employment center will help meet current and projected occupational needs in the area;

(4) In-service training will be provided for community education employment center teachers in techniques, procedures, and policies relevant to the community education employment center;

(5) Support services will be provided to meet the requirements of § 408.30; and

(6) Parental and community participation will be provided for, as required in § 408.31.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed community education employment center on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student performance, achievement, and learning gains in vocational competencies and skills;

(ii) Student performance, achievement, and learning gains in such subjects as English, mathematics, history, geography, biology, chemistry, physics, and computer science as measured by standardized tests;

(iii) High school graduation;

(iv) Placement of students in jobs, including military service; and

(v) Successful transfer of students to a wide variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project, including the provision for meeting and reporting on the requirements in § 408.34;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the services provided to participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to assess the effectiveness and efficiency of the plan for demonstrating and disseminating information about the project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating those methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting and training others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the parent/community coordinator and personnel who will be employed to meet the requirements in § 408.33;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from appropriate employment, training, and education agencies in the State to provide project services and activities, and using non-Federal resources of community organizations to provide the support services described in § 408.30; and

(4) Proposes using funds or resources available from the State or local educational agency in which the center will be located or will serve to acquire community education employment center equipment and facilities in order to provide a maximum amount of resources for instructional and student services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to assess the adequacy of resources the applicant plans to devote to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396e, 2396g, and 2396h)

§ 408.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 408.22, the Secretary may select other than the

most highly rated applications for funding if doing so would improve the—

(a) Distribution between applicants serving rural and urban youth; or

(b) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396)

Subpart D—What Conditions Must Be Met After an Award?

§ 408.30 What are the requirements regarding support services?

Each grantee shall establish in its community education employment center a support system to coordinate services for students, including the following:

(a) A comprehensive program of confidential guidance counseling that provides—

(1) Guidance for career and personal decision-making and postsecondary institution placement;

(2) Mentoring and referral to appropriate social services; and

(3) An accessible counseling service to help parents to participate in the enhancement of student education.

(b) An on-site job service office to offer students—

(1) Career guidance, career development, and employment counseling that provides information about a broad range of occupations and alternative career paths;

(2) Labor market information, job development, career testing, and occupational placement services for part-time and summer employment, internships, cooperative programs, and part-time and full-time employment opportunities upon graduation; and

(3) Assistance in arranging part-time employment, so long as that employment does not adversely affect academic performance.

(c) Assistance in arranging a summer program of work, education, or enrichment sessions.

(d) To the extent possible, transportation to and from the community education employment center and part-time job sites.

(e) Access to day-care services for children of participating students.

(Authority: 20 U.S.C. 2396c)

§ 408.31 What are the requirements regarding a parent/community coordinator?

Each grantee shall employ a parent/community coordinator to provide for the active and informed participation of parents and appropriate community representatives in its community education employment center by—

(a) Encouraging parents and students to make informed decisions in reviewing and selecting a community education employment center program;

(b) Conducting regular parent seminars to—

(1) Inform parents about community education employment center operations;

(2) Obtain parent input; and

(3) Disseminate information on how parents can encourage student performance;

(c) Providing the parents of each student with a regular opportunity to meet with counselors, teachers, and the student to discuss student progress, plans, and needs;

(d) Providing a range of roles in which parents may work with students at home or as class assistants or volunteer coordinators; and

(e) Establishing a Council of Advisors as required in § 408.32.

(Authority: 20 U.S.C. 2396d(a))

§ 408.32 What are the requirements regarding a Council of Advisors?

(a) *Establishment.* Each grantee shall establish an advisory Council of Advisors (Council).

(b) *Membership.* The Council must consist of one representative from each of the following entities:

(1) The local educational agency in which the center is located or serves.

(2) The State council on vocational education.

(3) The State agency responsible for secondary vocational education.

(4) The student body.

(5) The local teacher organization.

(6) Guidance counselors.

(7) Community-based organizations.

(8) Parents.

(9) The appropriate private industry council established under section 102(a) of the Job Training Partnership Act (29 U.S.C. 1512).

(c) *Functions of the council.* The Council shall provide recommendations to, and work with, the grantee to—

(1) Establish annual community education employment center priorities, programs, and procedures;

(2) Establish student selection criteria to ensure that—

(i) All students in the school district have an equal opportunity to attend the community education employment center; and

(ii) Participants will be representative of the secondary school population in the school district;

(3) Promulgate a student code of conduct that must be developed in consultation with the students and teachers;

(4) Assist in the selection of the community education employment center's principal, administrators, department chairpersons, and teachers;

(5) Assist in the selection and application of assessment tools for continuous evaluation of student learning progress;

(6) Make recommendations for the selection of curriculum, textbooks, software, and other learning resources and equipment; and

(7) Make recommendations regarding the coordination of activities assisted under this part with—

(i) Activities assisted under the Job Training Partnership Act; and

(ii) School-to-work transition activities.

(Authority: 20 U.S.C. 2396d(a)(5), (b))

§ 408.33 What are the requirements regarding other center personnel?

Each grantee shall—

(a) Employ only professional staff who demonstrate the highest of academic, teaching, guidance, or administrative standards;

(b) Ensure that teachers in the center receive inservice training at least annually in techniques, procedures, and policies relevant to the community education employment center; and

(c) Employ a sufficient number of full-time certified or licensed guidance and career counselors to assist, enhance, and monitor student progress.

(Authority: 20 U.S.C. 2396e)

§ 408.34 What are the evaluation requirements?

(a) Each grantee shall provide for an independent evaluation of grant activities and student learning progress.

(b) The evaluation must be both formative and summative in nature, and must include information regarding—

(1) Student academic and vocational competencies, including competencies such as those in the academic and vocational areas described in § 408.3(a)(4) (i) and (iii)(B);

(2) Student dropout rates;

(3) Employment and earnings while the students are attending the community education employment center and upon the graduation of the students from the center;

(4) Student attendance at postsecondary institutions or student enlistment into military service upon graduation from the community education employment center;

(5) Parental, student, and community participation in the activities of the community employment education center; and

(6) Project spread and transportability.

(c) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first six months of the project period.

(d) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396h(a))

PART 429—[REDESIGNATED FROM PART 409]

11. Part 409 is redesignated as part 429 and a new part 409 is added to read as follows:

PART 409—VOCATIONAL EDUCATION LIGHTHOUSE SCHOOLS PROGRAM

Subpart A—General

Sec.

409.1 What is the Vocational Education Lighthouse Schools Program?
409.2 Who is eligible for an award?
409.3 What activities may the Secretary fund?
409.4 What regulations apply?
409.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

409.20 How does the Secretary evaluate an application?
409.21 What selection criteria does the Secretary use?
409.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

409.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2396m, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Vocational Education Lighthouse Schools Program?

The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools.

(Authority: 20 U.S.C. 2396m(a))

§ 409.2 Who is eligible for an award?

A public secondary school or area vocational education school is eligible for an award under the Vocational Education Lighthouse Schools Program.

(Authority: 20 U.S.C. 2396m(a))

§ 409.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects to establish vocational education lighthouse schools that—

(a) Serve as a model vocational education program that—

(1) Provides each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(2) Provides each student with basic and higher order skills and develops the student's problem solving abilities in a vocational setting;

(3) Offers exceptionally high quality programs for disadvantaged and minority students;

(4) Provides the special services and modifications necessary to help individual students successfully complete the program;

(5) Is planned, developed, and implemented with the participation of staff, local employers, and local community representatives; and

(6) Offers a full range of programs, including comprehensive career guidance and counseling, for students who plan to seek employment upon graduation or who will enroll in a two- or four-year college;

(b) Provide information and assistance to other vocational education lighthouse schools funded under this part, vocational programs, vocational education personnel, parents, students, educators, community members, and community organizations throughout the State in which the project is located regarding—

(1) Curriculum materials;

(2) Curriculum development, especially the integration of vocational and academic education;

(3) Inservice and preservice staff development, training, and assistance through off-site activities and through a range of short-term and long-term opportunities to participate in activities at the demonstration site;

(4) Opportunities to systematically observe the model program; and

(5) Technical assistance and staff development, as appropriate;

(c) Use funds received under this program, together with funds from non-Federal sources, to develop and implement model programs containing the elements described in paragraph (a) of this section;

(d) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(e) Develop and disseminate model approaches—

(1) For meeting the education and training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency; and

(2) To reduce and eliminate sex bias and stereotyping.

(Authority: 20 U.S.C. 2396m(b))

§ 409.4 What regulations apply?

The following regulations apply to the National Vocational Education Lighthouse Schools Program:

(a) The regulations in this part 409.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396m)

§ 409.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2396m)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 409.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 409.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 409.21.

(Authority: 20 U.S.C. 2396m)

§ 409.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess—

(1) The quality of the plan to—

(i) Provide each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(ii) Provide each student with basic and higher order skills and develop the student's problem solving abilities in a vocational setting;

(iii) Involve staff, local employers, and local community representatives in the planning for and developing the project;

(iv) Integrate vocational and academic education;

(v) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(vi) Offer exceptionally high quality programs for disadvantaged and minority students;

(2) The extent to which the project—

(i) Is specifically designed to meet the education and training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency;

(ii) Will contribute to the reduction and elimination of sex bias and stereotyping; and

(iii) Is designed in accordance with current and projected occupational needs; and

(3) The quality of the staff development plan.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed vocational education lighthouse school on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student achievement and learning gains in vocational education;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the achievement of the outcomes described in paragraph (a) of this section and the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that result in achievement of the outcomes described in paragraph (a) of this section and address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project's management design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants in terms of the activities described in § 409.3(a), as appropriate, and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Identification of target groups and provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from non-Federal sources such as appropriate employment, training, and education programs in the State to acquire vocational education lighthouse school equipment and facilities in order to devote a maximum amount of resources to instructional services; and

(4) Includes documentation of the availability of funds from non-Federal

sources that will be used for activities described in § 409.3(a).

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396m)

§ 409.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 409.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396m)

Subpart D—What Conditions Must Be Met After an Award?

§ 409.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must include assessment of student achievement in areas such as those described in § 409.3(a)(1) and (2); increases in academic and vocational competencies, completion, and placement rates; and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), shall be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396m)

12. Part 410 is revised to read as follows:

PART 410—TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS PROGRAM

Subpart A—General

Sec.

410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?
410.2 Who is eligible for an award?
410.3 What activities may the Secretary fund?
410.4 What regulations apply?
410.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

410.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

410.20 How does the Secretary apply the selection criteria in § 410.21?
410.21 What selection criteria does the Secretary use for institutional support grants?
410.22 What additional factors does the Secretary consider?
410.23 How does the Secretary select grantees for institutional support grants?
410.24 How does the Secretary award additional grants?

Subpart D—What Conditions Must Be Met After an Award?

410.30 What expenses are allowable under an institutional support grant?
410.31 What other provisions apply to this program?

Authority: 20 U.S.C. 2397–2397h, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?

The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

(Authority: 20 U.S.C. 2397 and 2397c)

§ 410.2 Who is eligible for an award?

A tribally controlled postsecondary vocational institution is eligible for assistance under this part if it—

(a) Is governed by a board of directors or trustees, a majority of whom are Indians;

(b) Demonstrates adherence to stated goals, a philosophy, or a plan of operation that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(c) Has been in operation for at least three years;

(d) Holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(e) Enrolls the full-time equivalency of not fewer than 100 students, of whom a majority are Indians.

(Authority: 20 U.S.C. 2397b)

§ 410.3 What activities may the Secretary fund?

The Secretary provides grants for basic support for the education and training of Indian students, including—

(a) Training costs;

(b) Educational costs;

(c) Equipment costs;

(d) Administrative costs; and

(e) Costs of operation and maintenance of the institution.

(Authority: 20 U.S.C. 2397a)

§ 410.4 What regulations apply?

The following regulations apply to the Tribally Controlled Postsecondary Vocational Institutions Program:

(a) The regulations in this part 410.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part, except for the definition of the term *Act*.

(b) The following definitions also apply to this part:

Act means the Tribally Controlled Vocational Institutions Support Act of 1990.

Indian means a person who is a member of an Indian tribe.

Indian student count means a number equal to the total number of Indian students enrolled in each tribally controlled vocational institution, determined as follows:

(1) The registrations of Indian students as in effect on October 1 of each year.

(2) Credits or clock hours toward a certificate earned in classes offered during a summer term must be counted toward the computation of the Indian

student count in the succeeding fall term.

(3) Credits or clock hours toward a certificate earned in classes during a summer term must be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of the student on the basis of the student's ability to benefit from the education or training offered. The institution is presumed to have established those criteria if the admission procedures for those studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. Credit earned by the student for purposes of obtaining a high school degree or its equivalent may not be counted toward the computation of the Indian student count.

(4) Indian students earning credits in any continuing education program of a tribally controlled vocational institution must be included in determining the sum of all credit or clock hours.

(5) Credits or clock hours earned in a continuing education program must be converted to the basis that is in accordance with the institution's system for providing credit for participation in those programs.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribally controlled postsecondary vocational institution means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes, and that offers technical degrees or certificate granting programs. This term does not include an institution that is a tribally controlled community college as defined in 34 CFR 400.4. (See Cong. Rec. S4116 (daily ed. April 5, 1990) (Statement of Senator Bingaman); Cong. Rec. H1708 (daily ed. May 9, 1989) (Statement of Rep. Richardson)).

(Authority: 20 U.S.C. 2397h and 25 U.S.C. 1801 (1) and (2))

Subpart B—How Does One Apply for an Award?

§ 410.10 What must an application contain?

(a) An application for a grant under the Tribally Controlled Postsecondary Vocational Institutions Program must include the following:

(1) Documentation showing that the institution is eligible according to the requirements in § 410.2.

(2) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-Federal auditor to audit the institution's programs.

(3) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed in § 410.30.

(4) The institution's Indian student count.

(b) An application for an institutional support grant must also contain a comprehensive development plan addressing the following:

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies the institution's distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve and the programs of study it offers and proposes to offer.

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population.

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students.

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors that could affect the institution.

(5) Major problems or deficiencies that inhibit the institution from realizing its mission.

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (b)(5) of this section.

(7) Measurable objectives related to reaching each goal.

(8) Time-frames for achieving the goals and objectives described in paragraphs (b)(6) and (7) of this section.

(9) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas.

(10) Major resource requirements necessary to achieve the institution's goals and objectives, including personnel, finances, equipment, and facilities.

(11) A detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Act. The statement must include information on allowable expenses listed in § 410.30.

(12) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2397b, 2397c(a), 2397d(b)(2)(B), and 2397f)

Subpart C—How Does the Secretary Make an Award?

§ 410.20 How does the Secretary apply the selection criteria in § 410.21?

(a) The Secretary evaluates an application on the basis of the criteria in § 410.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 410.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion in § 410.21 is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 410.21.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.21 What selection criteria does the Secretary use for institutional support grants?

The Secretary uses the following criteria to evaluate an application for an institutional support grant:

(a) *Institutional goals and objectives.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved.

(b) *Comprehensive development plan.* (25 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, and equipment and capital requirements.

(c) *Implementation strategy.* (20 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(1) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(2) Includes a realistic timetable for each such activity; and

(3) Includes a staff management plan likely to ensure effective administration of the project activities.

(d) *Budget and cost effectiveness.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(2) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

(3) The budget narrative justifies the expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(2) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(3) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2397-2397h)

§ 410.22 What additional factors does the Secretary consider?

(a) After evaluating applications according to the criteria in § 410.21 and consulting, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered, the Secretary determines whether the most highly rated applications are equitably distributed among Indian tribes.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects among Indian tribes.

(c) In addition to the criteria in § 410.21, the Secretary considers whether funding a particular applicant duplicates an effort already being made.

(Authority: 20 U.S.C. 2397-2397h)

§ 410.23 How does the Secretary select grantees for institutional support grants?

(a) The Secretary selects at least two eligible applicants for funding.

(b) If only one or two applicants are eligible, the Secretary selects each eligible applicant. The amount of each grant is determined by the quality of the application, based on the selection criteria in § 410.22, and the respective needs of the applicants.

(c) If there are more than two eligible applicants, the Secretary ranks each application using the selection criteria in § 410.22. The Secretary funds two or more applicants. The number of grants made and the amount of each grant is determined by taking into account the quality of the applications and the respective needs of the applicants.

(d) For fiscal years subsequent to the first year of funding, the Secretary follows the procedure in paragraphs (a) through (c) of this section, except that if appropriations for that fiscal year are not sufficient to pay in full the total amount that approved applicants are eligible to receive, the Secretary allocates the available grant amounts as required by section 388(a) of the Act.

(Authority: 20 U.S.C. 2397c(b))

§ 410.24 How does the Secretary award additional grants?

If funds remain after providing grants to all eligible institutions, the Secretary makes awards as follows:

(a) The Secretary allocates funds to institutions receiving their first grant under this part in an amount equal to the training equipment costs necessary to implement training programs.

(b) If funds remain after the Secretary makes awards under paragraph (a) of this section, the Secretary reviews training equipment needs at each institution receiving assistance under this part at the end of the five-year period beginning on the first day of the first year for which the institution received a grant under this part, and provides allocations for other training equipment needs if it is demonstrated by the institution that its training equipment has become obsolete for its purposes, or that the development of other training programs is appropriate.

(Authority: 20 U.S.C. 2397d(d))

Subpart D—What Conditions Must Be Met After an Award?

§ 410.30 What expenses are allowable under an institutional support grant?

An institutional support grant may only be used to pay expenses associated with the following:

(a) The maintenance and operation of the program, including—

(1) Development costs;

(2) Costs of basic and special instruction, including special programs for individuals with disabilities and academic instruction;

(3) Materials;

(4) Student costs;

(5) Administrative expenses;

(6) Boarding costs;

(7) Transportation;

(8) Student services;

(9) Day care and family support programs for students and their families, including contributions to the costs of education for dependents; and

(10) Training equipment costs necessary to implement training programs.

(b) Capital expenditures, including operations and maintenance, minor improvements and repair, and physical plant maintenance costs.

(c) Costs associated with repair, upkeep, replacement, and upgrading of instructional equipment.

(Authority: 20 U.S.C. 2397d(a), (d))

§ 410.31 What other provisions apply to this program?

(a) Except as specifically provided in the Act, eligibility for assistance under

this part may not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) or any other applicable program for the benefit of institutions of higher education or vocational education.

(b) No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) may be denied a contract for that portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) (except as provided in that Act), or denied appropriate contract support to administer that portion of the appropriated funds.

(Authority: 20 U.S.C. 2397e)

13. Part 411 is revised to read as follows:

PART 411—VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.

411.1 What is the Vocational Education Research Program?
411.2 Who is eligible for an award?
411.3 What activities may the Secretary fund?
411.4 What regulations apply?
411.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

411.20 How does the Secretary evaluate an application?
411.21 What selection criteria does the Secretary use?
411.22 What additional factors may the Secretary consider?
411.23 How does the Secretary evaluate unsolicited applications?
411.24 How does the Secretary select an unsolicited application for funding?

Authority: 20 U.S.C. 2401 and 2402, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Vocational Education Research Program?

The Vocational Education Research Program is designed to—

(a) Improve access to vocational educational programs for individuals with disabilities, individuals who are disadvantaged, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Support research and development activities that make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population by concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society;

(c) Improve the competitive process by which research projects are awarded;

(d) Encourage the dissemination of findings of research projects assisted under the Act to all States; and

(e) Support research activities that are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Authority: 20 U.S.C. 2401)

§ 411.2 Who is eligible for an award?

(a) Any individual or public or private agency, organization, or institution may apply for an award under this part.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Authority: 20 U.S.C. 2402(a), (b))

§ 411.3 What activities may the Secretary fund?

The Secretary may directly, or through grants, cooperative agreements, or contracts, conduct applied research on aspects of vocational education that are specially related to the Act, including the following:

(a) Applied research on—

(1) Effective methods for providing quality vocational education to individuals with disabilities, disadvantaged individuals, men and women in nontraditional fields, adults, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) The development and implementation of performance standards and measures that fit within the needs of State boards of vocational education or eligible recipients as defined in 34 CFR 400.4 in carrying out the provisions of the Act and on the relationship of those standards and measures to the data system established under section 421 of the Act. Research may include an evaluation of existing performance standards and measures and dissemination of that information to State boards of vocational education and eligible recipients;

(3) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their efficacy and for improving worker training and retraining;

(4) The constructive involvement of the private sector in public vocational education;

(5) Successful methods of reinforcing and enhancing basic and more advanced academic and problem-solving skills in vocational settings;

(6) Successful methods for providing students, to the maximum extent practicable, with experience in and understanding of all aspects of the industry those students are preparing to enter; and

(7) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training.

(b) An evaluation of the use of performance standards and measures under the Act and the effect of those standards and measures on the participation of students in vocational education programs and on the outcomes of students in those programs, especially students who are members of special populations as defined in 34 CFR 400.4.

(Authority: 20 U.S.C. 2402(a))

§ 411.4 What regulations apply?

The following regulations apply to the Vocational Education Research Program:

(a) The regulations in this part 411.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2401 and 2402)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 411.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance

with paragraph (d) of the section, based on the criteria in § 411.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 411.21.

(e) The Secretary awards five points to applications submitted by public or private postsecondary institutions.

(Authority: 20 U.S.C. 2402)

§ 411.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *National need.* (20 points) The Secretary reviews each application to determine the extent to which the project would make a contribution of national significance, as measured by such factors as—

(1) The need for the project in relation to any program priority announced in the **Federal Register**; and

(2) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable and necessary in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(4) If appropriate, identifies expected outcomes of the project participants and how those outcomes will be measured;

(5) If appropriate, will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) To the extent possible, include a third party evaluation.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A clear description of the project outcomes; and

(3) A detailed description of how information and materials will be disseminated, including—

(i) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journals articles, newsletters, and brochures;

(ii) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques; and

(iii) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2402)

§ 411.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 411.21 the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this part.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.23 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application that has not been submitted under a competition announced in the **Federal Register** for that fiscal year, if the project proposes activities described in § 411.3.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register**.

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures in §§ 411.20(e) and 411.24.

(d) The Secretary assigns the 15 points reserved under § 411.20(b) as follows:

(1) Ten points to the selection criterion in § 411.21(a)—national need.

(2) Five points to the selection criterion in § 411.21(b)—plan of operation.

(Authority: 20 U.S.C. 2402)

§ 411.24 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 411.21, the Secretary compares that application to other unsolicited research applications the Secretary has received.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Authority: 20 U.S.C. 2402)

14. Part 412 is revised to read as follows:

PART 412—NATIONAL NETWORK FOR CURRICULUM COORDINATION IN VOCATIONAL AND TECHNICAL EDUCATION

Subpart A—General

Sec.

412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?
412.2 Who is eligible for an award?
412.3 What activities may the Secretary fund?
412.4 What is the National Network of Directors Council?
412.5 What regulations apply?
412.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

412.20 How does the Secretary evaluate an application?
412.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

412.30 What additional activities must be carried out by Curriculum Coordination Centers?
412.31 What existing dissemination systems must be used?

Authority: 20 U.S.C. 2402(c), unless otherwise noted.

Subpart A—General

§ 412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?

The National Network for Curriculum Coordination in Vocational and Technical Education (Network) is a system of six curriculum coordination centers that disseminate information resulting from research and development activities carried out under the Act, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

§ 412.2 Who is eligible for an award?

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program.

(Authority: 20 U.S.C. 2402(c))

§ 412.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts to six regional curriculum coordination centers (CCCs).

(b) Each CCC must—(1) Provide for national dissemination of information on effective vocational and technical education programs and materials, with particular attention to regional programs;

(2) Be accessible by electronic means;

(3) Provide leadership and technical assistance in the design, development, and dissemination of curricula for vocational education;

(4) Coordinate the sharing of information among the States with respect to vocational and technical education curricula;

(5) Reduce duplication of effort in State activities for the development of vocational and technical education curricula; and

(6) Promote the use of research findings with respect to vocational education curricula.

(c) The six regional CCCs assisted with funds under this program must serve States according to the Department of Education's regional alignment as follows:

(1) The Northeast Curriculum Coordination Center serves Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(2) The Southeast Curriculum Coordination Center serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) The East Central Curriculum Coordination Center serves Delaware, the District of Columbia, Indiana, Illinois, Maryland, Michigan, Minnesota, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

(4) The Midwest Curriculum Coordination Center serves Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

(5) The Northwest Curriculum Coordination Center serves Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(6) The Western Curriculum Coordination Center serves American Samoa, Arizona, California, Guam, Hawaii, Nevada, the Northern Mariana Islands, and Palau until the Compact of Free Association with Palau takes effect.

(Authority: 20 U.S.C. 2402(c))

§ 412.4 What is the National Network of Directors Council?

(a) The National Network of Directors Council (Council) enhances the effectiveness of the Network by—

(1) Planning for inter-center coordination, dissemination, and diffusion activities;

(2) Providing leadership to ensure cohesiveness for overall Network functions;

(3) Promoting the adoption and adaptation of curriculum materials;

(4) Maintaining liaison with dissemination systems described in § 412.32;

(5) Convening at least twice a year; and

(6) Planning for and participating in an annual meeting of CCCs that includes activities such as displays of current curriculum materials from each CCC, inservice training sessions, and hands-on experience with new technologies in vocational and technical education. This meeting must be held in a different region each year.

(b) The Council is composed of the six CCC directors and a liaison from the Department. One of the CCC directors serves as chair for the Council and has responsibilities for submitting minutes of Council meetings to the Secretary.

(Authority: 20 U.S.C. 2402(c))

§ 412.5 What regulations apply?

The following regulations apply to the National Network for Curriculum Coordination in Vocational and Technical Education:

(a) The regulations in this part 412.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2402(c))

§ 412.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2402(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 412.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.21.

(b) The Secretary may award up to 100 points, including 15 points to be

distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 412.21.

(Authority: 20 U.S.C. 2402(c))

§ 412.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Regional need.* (30 points) The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including the extent to which the applicant—

(1) Demonstrates an understanding of the leadership responsibilities associated with serving as a resource center and facilitator for States in a region, including the region's need for inservice training, holding regional meetings, providing technical assistance, coordinating with State directors of vocational education, maintaining a lending library, and disseminating information regularly;

(2) Proposes adequate mechanisms and procedures for reporting the results of curriculum networking services and activities of the 50 States, District of Columbia, Puerto Rico, and the Outlying Areas;

(3) Demonstrates the capacity to disseminate information on effective vocational education materials, including curriculum materials;

(4) Demonstrates an understanding of the operation of the Vocational Education Curriculum Materials and ADVOCNET Systems and the need for establishing a Tech-Prep education clearinghouse; and

(5) Demonstrates the capacity to undertake the responsibilities associated with participation as a member of the Network Directors Council described in § 412.4.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine the personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in the fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Has experience with vocational education curriculum and dissemination;

(2) Will initiate and maintain liaison functions with regional States; and

(3) Will provide adequate facilities, equipment, and supplies.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities; and

(2) The budget contains costs that are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project; and

(2) Identifies expected outcomes of the services provided and how those services will be measured.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2402(c))

Subpart D—What Conditions Must Be Met After An Award?

§ 412.30 What additional activities must be carried out by Curriculum Coordination Centers?

In carrying out the activities described in § 412.3, each CCC must perform the following activities:

(a) Assist States in the development, adaptation, adoption, dissemination, and use of curriculum materials and services and other information resulting from research and development activities carried out under the Act, including performing these activities during at least two regional meetings involving States served by the CCC. One of these regional meetings must be conducted jointly with the other five CCCs and their regional States at the meeting described in § 412.4(a)(6).

(b) Coordinate with other curriculum coordination centers funded under this part.

(c) Coordinate with the State salaried State liaison representative (SLR), who is appointed by the State director of vocational education. The SLR has primary responsibilities for liaison activities within the States, including—

(1) Obtaining new curriculum and research and development materials for Network sharing;

(2) Informing localities and State agencies of Network services;

(3) Disseminating CCC related materials;

(4) Arranging for intrastate and interstate development and dissemination activities;

(5) Arranging for technical assistance and inservice training workshops;

(6) Participating in regional CCC meetings; and

(7) Fostering adoption and adaptations of materials available through the CCC.

(d) Maintain a lending library with a collection of vocational education curriculum, research, and development materials for use by the States served by the CCC.

(e) Each CCC must participate in the Council activities described in § 412.4.

(Authority: 20 U.S.C. 2402(c))

§ 412.31 What existing dissemination systems must be used?

In carrying out its activities, each CCC must use existing dissemination systems, including the National Diffusion Network and the National Center or Centers for Research in

Vocational Education, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

15. A new part 413 is added to read as follows:

PART 413—NATIONAL CENTER OR CENTERS FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.

413.1 What is the National Center or Centers for Research in Vocational Education?
413.2 Who is eligible to apply for the National Center or Centers?
413.3 What kinds of activities are carried out?
413.4 How does the Secretary designate a National Center or Centers?
413.5 What regulations apply?
413.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

413.20 How does the Secretary evaluate an application?
413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?
413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

Subpart D—What Conditions Must Be Met After an Award?

413.30 What are the restrictions on the use of funds?
413.31 Must a National Center have a director?
413.32 What are the requirements for coordination?
413.33 What substantive studies must the National Center or Centers conduct and submit?
413.34 What activities must be performed during the final year of an award?

Authority: 20 U.S.C. 2404, unless otherwise noted.

Subpart A—General

§ 413.1 What is the National Center or Centers for Research in Vocational Education?

The Secretary supports the establishment of one or two National Centers for Research in Vocational Education (National Center) in the areas of—

(a) Applied research and development; and

(b) Dissemination and training.

(Authority: 20 U.S.C. 2404)

§ 413.2 Who is eligible to apply for the National Center or Centers?

An institution of higher education or consortium of institutions of higher education may apply to be a National Center under this part.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 2404(a)(5))

§ 413.3 What kinds of activities are carried out?

The Secretary provides a grant or cooperative agreement to a National Center or Centers that are designed to perform either one or both of the following activities:

(a) *Applied research and development activities.* (1) A major purpose of the National Center is to design and conduct research and development activities that are consistent with the purposes of the Act, including—

(i) Longitudinal studies that extend over a period of years;

(ii) Supplementary and short-term activities; and

(iii) Upon negotiation with the center, and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct applied research and development activities that include examination of the following:

(i) Economic changes that affect the skills that employers seek and entrepreneurs need.

(ii) Integration of academic and vocational education.

(iii) Efficient and effective practices for addressing the needs of special populations.

(iv) Efficient and effective methods for delivering vocational education.

(v) Articulation of school and college instruction with high quality work experience.

(vi) Recruitment, education, and enhancement of vocational teachers and other professionals in the field.

(vii) Accountability processes in vocational education, including identification and evaluation of the use of appropriate performance standards for student, program, and State-level outcomes.

(viii) Effective practices that educate students in all aspects of the industry the students are preparing to enter.

(ix) Effective methods for identifying and inculcating literacy and other communication skills essential for effective job preparation and job performance.

(x) Identification of strategic, high priority occupational skills and skills formation approaches needed to maintain the competitiveness of the United States workforce, sustain high-wage, high-technology jobs, and address national priorities such as technical jobs needed to protect and restore the environment.

(xi) Identification of practices and strategies that address entrepreneurial development for minority-owned enterprises.

(3) The applied research and development activities must include—

(i) An emphasis on the recruitment, education, and enhancement of minority and female vocational teachers and professionals; and

(ii) Activities that aid in the development of minorities and women for leadership roles in vocational education.

(b) *Dissemination and training activities.* (1) A major purpose of the National Center is to design and conduct dissemination and training activities that are consistent with the purposes of the Act, including—

(i) The broad dissemination of the results of the research and development conducted by the National Center;

(ii) The development and utilization of a national level dissemination network including functions such as clearinghouses, databases, and telecommunications;

(iii) Planning, developing, and conducting training activities; and

(iv) Upon negotiation with the Center and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct dissemination and training activities that include the following:

(i) Teacher and administrator training and leadership development.

(ii) Technical assistance to ensure that programs serving special populations are effective in delivering well-integrated and appropriately articulated vocational and academic offerings for secondary, postsecondary, and adult students.

(iii) Needs assessment, design, and implementation of new and revised programs with related curriculum materials to facilitate vocational-academic integration.

(iv) Evaluation and follow-through to maintain and extend quality programs.

(v) Assistance in technology transfer and articulation of program offerings from advanced technology centers to minority enterprises.

(vi) Assistance to programs and States on the use of accountability indicators, including appropriate and innovative performance standards.

(vii) Delivery of information and services using advanced technology, if

appropriate, to increase the effectiveness and efficiency of knowledge transfer.

(viii) Development of processes for synthesis of research, in cooperation with a broad array of users, including vocational and non-vocational educators, employers and labor organizations.

(ix) Dissemination of exemplary curriculum and instructional materials, and development and publication of curriculum materials (in conjunction with vocational and nonvocational constituency groups, if appropriate).

(x) Technical assistance in recruiting, hiring, and advancing minorities in vocational education.

(3) The training and leadership development activities must include an emphasis on—

(i) Training minority and female teachers; and

(ii) Programs and activities that aid in the development of minorities and women for leadership roles in vocational education.

(4) Advanced technology may include audio-video cassettes, electronic networking, satellite-assisted programming, computer-based conferencing, and interactive video.

(Authority: 20 U.S.C. 2404 (b) and (c); House Report No. 101-660, 101st Cong. 2nd Sess. p. 143 (1990))

§ 413.4 How does the Secretary designate a National Center or Centers?

(a) The Secretary designates a National Center or Centers once every five years.

(b) In designating the National Center or Centers for Research in Vocational Education, the Secretary may support—

(1) One National Center that conducts both research and development activities and dissemination and training activities; or

(2) Two National Centers: one that conducts research and development activities and one that conducts dissemination and training activities.

(Authority: 20 U.S.C. 2404)

§ 413.5 What regulations apply?

The following regulations apply to the National Center or Centers:

(a) The regulations in this part 413.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2404)

§ 413.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part, except that the term "institution of higher education" has the same meaning as provided in 34 CFR 403.117(b).

(Authority: 20 U.S.C. 1085(b) and 2404)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 413.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 413.21 and 413.22.

(b) The Secretary may award up to 100 points to each set of criteria in §§ 413.21 and 413.22, including a reserved 10 points for each set of criteria to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in §§ 413.21 and 413.22.

(e) The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers. One competition will be held for research and development activities and the second competition will be held for dissemination and training activities. An institution of higher education or consortium of higher education institutions may submit a research and development application; a dissemination and training application; or both as separate applications under separate covers.

(f) The Secretary evaluates applications for the research and development center and the dissemination and training center independently against the criteria in §§ 413.21 and 413.22 whether an institution or consortium of institutions is competing for either or both sets of activities.

(g) In accordance with section 404(a)(5) of the Act, the Secretary will give preference in grant selection to institutions or consortia of institutions that demonstrate the ability to carry out both the research and development and the dissemination and training activities effectively, either directly or by contract.

(h) An institution or consortium of institutions that has submitted two applications and applied for a single grant for the purpose of carrying out both activities and that has earned 80 points or higher on each of its two applications, will be deemed by the Secretary to have demonstrated the ability to carry out both activities effectively.

(i) The Secretary will award a single grant to an institution or consortium of institutions that has both—

(1) Demonstrated the ability to carry out both program activities effectively, in accordance with paragraph (h) of this section; and

(2) Earned the highest combined score among those institutions or consortia of institutions that have demonstrated the ability to carry out both activities effectively.

(j) If no institution or consortium of institutions is selected for a single grant award, the institution or consortia of institutions ranking highest in each of the two competitions will each receive a grant award.

(Authority: 20 U.S.C. 2404)

§ 413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?

The Secretary uses the following selection criteria in evaluating each research and development application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required research and development activities described in § 413.3(a)(2) will be of high quality and effective.

(b) *Plan of operation.* (35 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The applicant's plan for managing the National Center;

(2) The procedures the applicant will use to implement the National Center particularly with regard to the public or private nonprofit institution of higher education with which it is associated and, in the case of a consortium, with the other member institutions of the consortium;

(3) The applicant's plan for managing the National Center's activities and personnel, including—

(i) Quality control procedures for its activities;

(ii) Procedures for assuring compliance with timelines;

(iii) Coordination procedures for communicating among staff, subcontractors, members of the consortium, if any, and the Department of Education;

(iv) Procedures for ensuring that adequate progress is being made toward achieving the goals of the grantee by subcontractors, and members of a consortium; and

(v) Procedures for ensuring that adequate budget, accounting, and recordkeeping procedures will be used;

(4) The quality of the applicant's detailed plans for year one of the National Center, including—

(i) Methodology and plan of operation;

(ii) Tasks and timelines;

(iii) Deliverables; and

(iv) Dissemination plans for each project; and

(5) The quality of the applicant's general plans for developing appropriate, coherent, and effective vocational education research and development activities, or dissemination and training activities, or both, for years two through five.

(c) *Key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use for the National Center, including—

(1) The extent to which the Director of the National Center has—

(i) Appropriate professional qualifications, relevant project management experience, and administrative skills;

(ii) A commitment to work full-time at the National Center;

(iii) A clear commitment to the goals of the project; and

(iv) Sufficient authority to effectively manage the activities of the National Center;

(2) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(3) The extent to which other key personnel to be used for the National Center—

(i) Have experience and training in project management and in fields related to the proposed activities they will be carrying out; and

(ii) Will commit sufficient time to the project.

(d) *Vocational education experience.* (10 points) The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational education, including—

(1) The applicant's experience in conducting applied research and development activities, dissemination and training activities, or both, in the field of vocational education of the type described in § 413.3;

(2) The applicant's capacity for conducting applied research and development activities, dissemination and training activities, or both, in the field of vocational education of the type described in § 413.3; and

(3) How the activities of the National Center will contribute to the advancement of relevant theory and practice in vocational education.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The Center has an adequate budget that is cost effective;

(2) The budget is adequate to support the Center's activities; and

(3) Costs are reasonable in relation to the objectives of the Center.

(f) *Coordination activities.* (5 points) The Secretary reviews each application to determine the extent to which there is an effective plan for the coordination of activities described in § 413.3 (a) and (b), and whether these activities are carried out between two institutions or within one institution.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2404)

§ 413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

The Secretary uses the following selection criteria in evaluating each dissemination and training application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required dissemination and training activities, described in § 413.3(b), will be of high quality and effective.

(b) The selection criteria and points in § 413.21 (b), (c), (d), (e), and (f).

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2404)

Subpart D—What Conditions Must Be Met After an Award?

§ 413.30 What are the restrictions on the use of funds?

(a) A National Center that performs both research and development activities and dissemination and training activities shall use at least two-thirds of its award for applied research and development.

(b) Not more than 10 percent of each year's budget for a National Center may be used to respond to field-initiated needs unanticipated prior to the annual funding period and that are in the mission of the National Center, but not part of the scope of work of the grant or cooperative agreement.

(Authority: 20 U.S.C. 2404(a)(3) and (b))

§ 413.31 Must a National Center have a director?

A National Center must have a full-time director who is appointed by the institution serving as the grantee.

(Authority: 20 U.S.C. 2404)

§ 413.32 What are the requirements for coordination?

If the Secretary designates two National Centers, the two centers must coordinate their activities.

(Authority: 20 U.S.C. 2404)

§ 413.33 What substantive studies must the National Center or Centers conduct and submit?

(a) The National Center conducting research and development activities shall annually prepare a study on the research conducted on approaches that lead to effective articulation for the education-to-work transition, including tech-prep programs, cooperative education or other work-based programs, such as innovative apprenticeship or mentoring approaches.

(b) The National Center conducting dissemination and training activities shall annually prepare a study of its dissemination and training activities.

(c) Annual studies described in paragraphs (a) and (b) of this section must be submitted to the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives.

(Authority: 20 U.S.C. 2404 (b)(2) and (c)(2))

§ 413.34 What activities must be performed during the final year of an award?

During the fifth year of the award cycle, the National Center or Centers shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2404)

16. Part 414 is revised to read as follows:

PART 414—MATERIALS DEVELOPMENT IN TELECOMMUNICATIONS PROGRAM

Subpart A—General

Sec.

414.1 What is the Materials Development in Telecommunications Program?
414.2 Who is eligible for an award?
414.3 What activities may the Secretary fund?
414.4 What regulations apply?
414.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

414.20 What priorities may the Secretary establish?
414.21 How does the Secretary evaluate an application?
414.22 What selection criteria does the Secretary use?
414.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

414.30 What cost-sharing requirements must be met?

Authority: 20 U.S.C. 2412, unless otherwise noted.

Subpart A—General

§ 414.1 What is the Materials Development in Telecommunications Program?

The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges.

(Authority: 20 U.S.C. 2412)

§ 414.2 Who is eligible for an award?

A public or private nonprofit educational telecommunications entity is eligible for an award under this part.

(Authority: 20 U.S.C. 2412)

§ 414.3 What activities may the Secretary fund?

The Secretary may support, through grants or cooperative agreements, projects that develop, produce, and distribute—

(a) A sequential course of study that includes either pre-produced video courseware or direct interactive teaching delivered via satellite, accompanied by a variety of print and computer-based instructional materials;

(b) Individual videocassettes or a series of videocassettes that supplement instruction that must be distributed both via broadcast and non-broadcast means;

(c) Videodiscs that produce simulated hands-on training; or

(d) Teacher training programs for vocational educators and administrators and correctional educators.

(Authority: 20 U.S.C. 2412)

§ 414.4 What regulations apply?

The following regulations apply to the Materials Development in Telecommunications Program:

(a) The regulations in this part 414.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2412)

§ 414.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2412)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 414.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program from the list of priorities in paragraph (b) of this section.

(b) In awarding grants under this part, the Secretary may give priority to programs or projects that serve—

(1) Students in area vocational and technical schools;

(2) Teachers, administrators, and counselors in need of training or retraining;

(3) Out-of-school adults in need of basic skills improvement or a high school equivalency diploma to improve the employability of these individuals;

(4) College students, particularly those who are working toward a two-year associate degree from a technical or community college;

(5) Workers in need of basic skills, vocational instruction, or career counseling to retain employment; or

(6) Workers who need to improve their skills to obtain jobs in high-growth industries.

(Authority: 20 U.S.C. 2412)

§ 414.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 414.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 414.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parenthesis after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 414.22.

(Authority: 20 U.S.C. 2412)

§ 414.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Educational significance.* (20 points) The Secretary reviews each application to assess the quality of the proposed project, including the extent to which the applicant—

(1) Provides a clear description of the plan to develop, produce, and distribute quality instructional telecommunications materials and services;

(2) Proposes using innovative techniques and approaches to educational problems and needs that are of national significance;

(3) Provides a clear description of how the proposed project will contribute to the improvement of education by promoting the use of instructional telecommunications materials and services in local vocational and technical educational schools and colleges;

(4) Provides a clear description of how the proposed project will provide electronic learning opportunities for populations described in § 414.20(b)(1) through (6); and

(5) Describes a project that is likely to make a significant contribution to the use of telecommunications materials and services in vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals and relate to the purpose of this program;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The appropriateness of the time that each person referred to in paragraphs (c)(1)(i) and (iii) of this section will commit to the project; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (iii) of this section, the Secretary considers—

(i) The experience and training of key personnel in fields related to the objectives of the project;

(ii) The experience and training of key personnel in project management; and

(iii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is cost effective and adequate to support the project activities;

(2) The proposed expenditures for each budget category are justified in a budget narrative; and

(3) Costs are necessary and reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine the effectiveness of the project in meeting the purposes of this program;

(3) Will determine the effect of the project on learning gains or competencies, or both, of persons being served by the project, especially, as appropriate—

(i) Students in area vocational and technical schools;

(ii) Teachers, administrators, and counselors in need of retraining;

(iii) Out-of-school adults in need of basic skills or a high school equivalency diploma;

(iv) College students in technical or community colleges; and

(v) Workers in need of basic skills, vocational instruction, or career counseling to retain employment.

(4) Will produce quantifiable data on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics and numbers of individual participants being served and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs; and

(iii) The effect of services on the quality of curricula, the retention of students in programs, and the academic and vocational competencies of students in vocational education programs.

(f) *Dissemination.* (10 points) The Secretary reviews each application to determine whether the applicant has an effective and efficient plan for disseminating information about the project, including—

(1) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials available, including information about the project, the results of the project, and any specialized materials developed by the project;

(3) Provisions for assisting others to adopt and successfully implement the projects or methods and techniques developed by the project; and

(4) Provisions for publicizing the findings of the project at the local, State, and national levels.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2412)

§ 414.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 414.22, the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this program.

(Authority: 20 U.S.C. 2412)

Subpart D—What Conditions Must Be Met After an Award?

§ 414.30 What cost-sharing requirements must be met?

(a) *Federal share.* (1) The Secretary pays no more than the Federal share of the cost of each project.

(2) The Federal share of the cost of each project assisted under this part is 50 percent.

(b) *Non-Federal share.* The non-Federal share of the cost of each project assisted under this part must be provided from non-Federal sources.

Cross-Reference: See 34 CFR part 74, Subpart G—Cost Sharing or Matching.

(Authority: 20 U.S.C. 2412)

17. Part 415 is revised to read as follows:

PART 415—DEMONSTRATION CENTERS FOR THE TRAINING OF DISLOCATED WORKERS PROGRAM

Subpart A—General

Sec.

415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?
415.2 Who is eligible for an award?
415.3 What activities may the Secretary fund?
415.4 What regulations apply?
415.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

415.20 How does the Secretary evaluate an application?
415.21 What selection criteria does the Secretary use?
415.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

415.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2413, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?

The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers.

(Authority: 20 U.S.C. 2413(a))

§ 415.2 Who is eligible for an award?

A private nonprofit organization that is eligible to receive funding under Title III of the Job Training Partnership Act (29 U.S.C. 1651 *et seq.*) is eligible to receive an award under this program.

(Authority: 20 U.S.C. 2413(d))

§ 415.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements for one or more centers that demonstrate the retraining of dislocated workers.

(b) Each center funded by the Secretary must be designed and operated to provide for the use of appropriate existing Federal, State, and local programs and resources.

(c) Each center may use funds to provide for— (1) The recruitment of unemployed workers;

(2) Vocational evaluation;

(3) Assessment and counseling services;

(4) Vocational and technical training;

(5) Support services; or

(6) Job placement assistance.

(Authority: 20 U.S.C. 2413(a))

§ 415.4 What regulations apply?

The following regulations apply to the Demonstration Centers for the Training of Dislocated Workers Program:

(a) The regulations in this part 415.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2413)

§ 415.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2413)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 415.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 415.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 415.21.

(Authority: 20 U.S.C. 2413)

§ 415.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the extent to which the proposed demonstration center for the training of dislocated workers will—

(1) Be located in a service area with a high concentration of dislocated workers, as supported by specific evidence of the need for the proposed demonstration center;

(2) Provide vocational education and technical training to meet current and projected occupational needs;

(3) Provide trainees with appropriate vocational evaluation, assessment, and counseling, support services, and job placement assistance;

(4) Result in trainees becoming employed in jobs related to their training upon completion of their training; and

(5) Use other appropriate Federal, State, and local programs to retrain, or provide services to, dislocated workers.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed demonstration center for the training of dislocated workers on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs, in such factors as—

(i) Student performance and achievement in vocational and technical training;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use innovative techniques to address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective including the use of appropriate existing Federal, State, and local programs; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Identification of target groups and provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire demonstration center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2413)

§ 415.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 415.21, the Secretary may select applications other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this program.

(Authority: U.S.C. 2413)

Subpart D—What Conditions Must Be Met After an Award?

§ 415.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2413)

18. Part 416 is revised to read as follows:

PART 416—VOCATIONAL EDUCATION TRAINING AND STUDY GRANTS PROGRAM

Subpart A—General

Sec.

416.1 What is the Vocational Education Training and Study Grants Program?
416.2 Who is eligible for an award?
416.3 What activities may the Secretary fund?
416.4 What regulations apply?
416.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

416.20 How does the Secretary evaluate an application?
416.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must be Met After an Award?

416.30 Which individuals are eligible to participate under this program?
416.31 What are the responsibilities of the grantee?

Authority: 20 U.S.C. 2414(a), unless otherwise noted.

Subpart A—General

§ 416.1 What is the Vocational Education Training and Study Grants Program?

The Vocational Education Training and Study Grants Program provides financial assistance for vocational teacher education, undergraduate or graduate training in vocational education, and vocational education student internships.

(Authority: 20 U.S.C. 2414(a))

§ 416.2 Who is eligible for an award?

An institution of higher education, State education agency, or State correctional education agency is eligible for an award under this part.

(Authority: 20 U.S.C. 2414(a))

§ 416.3 What activities may the Secretary fund?

The Secretary supports grants or cooperative agreements for eligible agencies or institutions to provide—

(a) Undergraduate and graduate training in vocational education;

(b) Vocational teacher education; and

(c) Opportunities for further study and professional development for gifted and talented students in vocational education programs by interning with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.4 What regulations apply?

The following regulations apply to the Vocational Education Training and Study Grants Program:

(a) The regulations in this part 416.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(a))

§ 416.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Stipend means funds used for room and board and personal living expenses, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 2414(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 416.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 416.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 416.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 416.21.

(Authority: 20 U.S.C. 2414(a))

§ 416.21 What selection criteria does the Secretary use?

(a) *Project design.* (20 points) The Secretary reviews each application to determine the quality of the project design, including—

(1) The extent to which the applicant understands and has responded to any program priorities announced in the **Federal Register** for the grant competition;

(2) The geographic area to be served and of the specific training or internships to be provided, including the purposes of the training or internships;

(3) The objectives of the project;

(4) The institutional and participant selection procedures;

(5) How resources and personnel (including resources and personnel of other entities) will be used to achieve each objective;

(6) When in each budget period the applicant plans to meet each objective;

(7) The extent to which the design of the project is practical and effective to achieve the purposes and goals in § 416.3; and

(8) The extent to which the management plan provides adequately for monitoring, supervising, and evaluating all entities and individuals participating in the project.

(b) *Applicant commitment and experience.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The applicant's selection procedures, including priorities and criteria, will be effective for selecting the institutions, agencies, organizations, and Center or Centers in which trainees will be placed; and

(2) The applicant has demonstrated competence and experience in operating training or internship programs similar to that proposed, including how, if applicable, its capabilities will be extended through subgrants, contracts, or agreements with other entities. If subgrants, contracts, or agreements with other entities are proposed, the applicant must include copies of the written agreements covering the intent of all proposed entities to participate with the applicant in achieving the purposes and objectives of the proposed project.

(c) *Key personnel.* (20 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The names and qualifications of key personnel, including the project director. If the names of key persons are not yet known, the applicant shall specify the minimum qualifications that will be used to select them;

(2) The qualifications of key personnel intended to be used under subgrants, contracts, or agreements and designation of their employment affiliation. If key personnel from other entities will be used, the applicant shall include copies of their stated intent to participate and copies of the concurrence of the entity by which they are employed to make them available for the time specified in the application;

(3) The extent to which key personnel are adequate and appropriate to achieve the objectives of the proposed project;

(4) Whether the allocation of time of key personnel to the objectives of the project seems adequate to predict achievement; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(d) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of resources the applicant plans to use, including the extent to which the applicant—

(1) Will use its resources and those of other participating entities effectively to accomplish the purposes and objectives of the proposed project;

(2) Will devote adequate financial and material resources to the project being proposed; and

(3) Will use adequate facilities and equipment for the project being proposed.

(e) *Participant recruitment and selection plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Will make information about the learning opportunities, the financial support to be provided, eligibility requirements, and the applicant's selection criteria broadly available to all individuals eligible to participate in the project;

(2) Has proposed participant selection criteria for each training or internship activity that are consistent with § 416.30; and

(3) Will ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation of the accomplishment of the purposes and objectives of the project, including—

(1) An evaluation of student participation by sex, race or ethnic group, and language proficiency for each vocational education category and each target position in vocational education for which training or internships are intended to prepare recipients;

(2) Comparing the active career pursuits and career goals of program participants before and after participation in training or an internship under the project; and

(3) Analyzing the completeness and accuracy of and synthesizing grantee records on the level of participation and progress of project participants in their learning pursuits and the level and timing of disbursements and recovery of financial support in relation thereto.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(a))

Subpart D—What Conditions Must be Met after an Award?

§ 416.30 Which individuals are eligible to participate under this program?

(a) The following individuals are eligible for training under this program:

(1) Experienced vocational educators who want to participate in advanced study of vocational education.

(2) Certified teachers who have been trained to teach in other fields and who

want to become teachers of vocational education students, including teachers with skills related to vocational fields who can be trained as vocational educators, and especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminal offenders.

(3) Individuals in industry who have skills and experience in vocational fields and who want to be trained as vocational educators.

(4) Vocational educators who want to improve or maintain technological currency in their fields.

(b) Gifted and talented vocational education secondary and postsecondary students are eligible under this program for internships with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.31 What are the responsibilities of the grantee?

(a) A grantee carrying out activities under § 416.3 (a) and (b) shall—

(1) Provide training directly, or, in the case of a State educational agency or a State correctional education agency, provide for training through a contract;

(2) Select individuals for participation in training activities; and

(3) Determine the amounts participants will receive for training, fellowships, stipends, or travel allowances.

(b) A grantee carrying out activities under § 416.3(c) shall—

(1) Select individuals for participation;

(2) Coordinate with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education that are willing to participate with the project in providing internships for further study and professional development for gifted and talented vocational education students; and

(3) Determine the amount participants will receive for subsistence allowance and other expenses such as necessary travel expenses related to participation.

(c) All grantees shall—

(1) Monitor, supervise, maintain records on, and report on the level and type of participation, and on the conditions and progress of the institutions, agencies, associations, Centers, and individuals involved in the project; and

(2) Evaluate, either directly or through a contract, and report on the accomplishment of the purposes and objectives of the project.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(a))

19. Part 417 is revised to read as follows:

PART 417—VOCATIONAL EDUCATION LEADERSHIP DEVELOPMENT AWARDS PROGRAM

Subpart A—General

Sec.

417.1 What is the Vocational Education Leadership Development Awards Program?
417.2 Who is eligible for an award?
417.3 What activities may the Secretary fund?
417.4 What regulations apply?
417.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

417.20 How does the Secretary evaluate an application?
417.21 What selection criteria does the Secretary use?
417.22 What additional factors does the Secretary consider?

Subpart D—What are the Administrative Responsibilities of Institutions?

417.30 What is the role of the institution in the administration of leadership development awards?
417.31 What selection criteria and procedures must an institution use in selecting students?
417.32 What are the special requirements regarding leadership development awards?
417.33 How are funds disbursed and returned?
417.34 Under what circumstances must an institution terminate a leadership development award?

Subpart E—How Does An Individual Apply for a Leadership Development Award?

417.40 Which individuals are eligible for an award?
417.41 How does an individual apply to an institution for a leadership development award?

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

417.50 May a course of study be interrupted?
417.51 Under what conditions must a leadership development award be returned?
417.52 What is the repayment schedule?
417.53 What interest is charged?
417.54 Under what circumstances is repayment deferred?
417.55 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(b), unless otherwise noted.

Subpart A—General

§ 417.1 What is the Vocational Education Leadership Development Awards Program?

The Vocational Education Leadership Development Awards Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs.

(Authority: 20 U.S.C. 2414(b))

§ 417.2 Who is eligible for an award?

An institution of higher education is eligible for an award under this part if it offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, and that program is—

(a) Designed to substantially advance the objective of improving vocational education in the State through providing opportunities for graduate training of teachers of vocational education students, vocational supervisors and administrators, and university-level vocational education teacher educators and researchers; and

(b) Conducted by a school of graduate study in the institution of higher education.

(Authority: 20 U.S.C. 2414(b)(4))

§ 417.3 What activities may the Secretary fund?

The Secretary provides grants to institutions for leadership development awards to individuals.

(Authority: 20 U.S.C. 2414(b))

§ 417.4 What regulations apply?

The following regulations apply to the Vocational Education Leadership Development Awards Program:

(a) The regulations in this part 417.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(b))

§ 417.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part: *Academic year* means a period of time in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures

academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) At least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours, but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Full-time course of study means the number of credit hours that an institution requires of a full-time student.

Full-time student means a student who—

(1) Carries a full-time course of study; and

(2) Is not employed for more than 20 hours a week.

Satisfactory proficiency means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

(Authority: 20 U.S.C. 2414(b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 417.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 417.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the Federal Register, the Secretary may assign the reserved points among the criteria in § 417.21.

(Authority: 20 U.S.C. 2414(b))

§ 417.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institutional commitment and experience.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The institution has resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education.

(2) The institution's vocational education program has been adopted as a permanent graduate program of study;

(3) The institution demonstrates competence and experience in programs and activities similar to those authorized under the Act;

(4) The applicant provides adequate documentation that its vocational education program meets the requirements in § 417.2; and

(5) The institution's vocational education program will address the need in the State for improving the quality and quantity of vocational personnel, including those referred to in § 417.1.

(b) *Academic program.* (15 points) The Secretary reviews each application to determine the adequacy of the institution's academic program including the—

(1) Range of course offerings and level and number of academic requirements for students; and

(2) Institutions's demonstrated success in preparing individuals for professional or academic careers in the vocational education field.

(c) *Key faculty.* (15 points) The Secretary reviews each application to determine the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(d) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the academic area, including the adequacy of—

(1) The facilities the applicant plans to use; and

(2) The equipment the applicant plans to use.

(e) *Recruitment plan.* (10 points) The Secretary considers the quality of an institution's plan for selecting graduate students, including—

(1) A description of how the institution will apply the requirements in § 417.31; and

(2) The extent to which the institution will make available to all individuals eligible to participate information about learning opportunities, the financial support available, eligibility requirements, and the institutions's criteria for selecting participants.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation—

(1) Of student participation by sex and racial or ethnic groups in relation to such indicators of need as the State's vocational education enrollments and the need for additional vocational education leadership in the State;

(2) Of the extent to which selection criteria and procedures used resulted in student participants who meet the eligibility requirements in § 417.40;

(3) Of the accuracy and validity of records on the level of participation and progress of program participants in their learning pursuits, and the appropriateness of the level and timing of disbursements in relation thereto; and

(4) Comparing the active career pursuits and career goals of participants before and after participating in the program to determine the extent to which they enter for the first time, returned to, or advance in work in vocational education in a leadership position.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(b))

§ 417.22 What additional factors does the Secretary consider?

(a) In addition to the criteria in § 417.21, the Secretary determines whether the most highly rated applicants are—

(1) Equitably distributed among the States; and

(2) Located in States that need additional vocational education personnel.

(b) The Secretary may select other applicants for funding if doing so would improve the equitable distribution of projects geographically and among the States needing additional trained personnel.

(Authority: 20 U.S.C. 2414(b)(5))

Subpart D—What Are the Administrative Responsibilities of Institutions?

§ 417.30 What is the role of an institution in the administration of leadership development awards?

An institution receiving an award under this part is responsible for—

(a) Administering the grant;

(b) Accepting, screening, and selecting individual applications in accordance with its own technical and academic criteria; and

(c) Disbursing and returning funds in accordance with procedures described in §§ 417.33 and 417.34, including making appropriate adjustments of any overpayment or underpayment to a

recipient of a leadership development award.

(Authority: 20 U.S.C. 2414(b))

§ 417.31 What selection criteria and procedures must an institution use in selecting students?

(a) An institution of higher education shall establish competitive selection criteria and procedures that reflect the needs of the State for qualified vocational education personnel, only after consultation with the State's vocational education leaders (such as administrators, researchers, and teachers) and analysis of relevant statewide data, including the State's vocational education enrollments.

(b) The institution shall design the selection criteria and procedures to ensure that it selects individuals—

(1) On the basis of demonstrated leadership potential, promise of continued achievement, and commitment;

(2) On the basis of the standards in § 417.40;

(3) Without regard to race, color, national origin, gender, age, disability, or economic background; and

(4) Without regard to financial need.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(b))

§ 417.32 What are the special requirements regarding leadership development awards?

(a) Leadership development awards to individuals—

(1) May not exceed $9,000 per individual per academic year or its equivalent and $3,000 per individual per summer session or its equivalent;

(2) May not be paid for more than three years; and

(3) May cover only expenses that are consistent with prevailing practices of the institution, including—

(i) Tuition and books;

(ii) Non-refundable fees;

(iii) A subsistence allowance for the individual and his or her dependents; and

(iv) Other expenses the institution deems necessary and reasonable and consistent with prevailing practices.

(b) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(c) The total financial assistance provided to an individual from all sources, other than loans, may not exceed the individual's need for that assistance.

(d) An institution may not provide a leadership development award to an individual who is not a full-time student.

(Authority: 20 U.S.C. 2414(b)(2) and (6))

§ 417.33 How are funds disbursed and returned?

(a) The institution shall disburse a leadership development award to an individual in no fewer than two installments per academic year.

(b) An institution shall make an award only to an individual who is in good standing and is making satisfactory progress.

Cross-Reference: See § 417.34(a).

(c) Before considering a leadership development award for new individuals, the Secretary provides payment to continue support for qualified individuals who—

(1) Received an award under this program in the previous year; and

(2) Are maintaining satisfactory progress as determined by the institution.

(d) If a leadership development award is vacated or discontinued, the institution shall notify the Secretary. The Secretary—

(1) Allows the award to follow the individual to another participating institution if the remaining award time comprises at least one academic quarter, semester, trimester, or summer session; or

(2) Permits the institution to use any unexpended funds from an award to make an award to an alternate applicant at that institution for a period of study that does not exceed the terms or amount of the original award.

(e) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(b))

§ 417.34 Under what circumstances must an institution terminate a leadership development award?

An institution shall—

(a) Terminate a leadership development award if the recipient of an award—

(1) Is not pursuing a full-time course of study in vocational education;

(2) Is not maintaining satisfactory proficiency in the course of study;

(3) Is engaged in gainful employment other than part-time employment by the institution in teaching, research, or similar activities;

(4) Is no longer enrolled, or is no longer in good standing at the institution; or

(5) Fails to follow the prescribed course of study for which he or she applied, unless a revised course of study is approved under this part;

(b) Terminate an award only after providing reasonable notice and an opportunity for the individual to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision; and

(c) Ensure that a recipient of a leadership development award repays all or a prorated portion of an award in accordance with the provisions in §§ 417.51 through 417.55.

(Authority: 20 U.S.C. 2414(b))

Subpart E—How Does an Individual Apply for a Leadership Development Award?

§ 417.40 Which individuals are eligible for an award?

An individual is eligible for an award if the institution participating under this part determines that the individual—

(a) Has at least three years of experience in vocational education or in industrial training, or, in the case of researchers, experience in social science research that is applicable to vocational education;

(b) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed at least a baccalaureate degree program;

(c) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and has been accepted for admission as a graduate student in an institution participating under this part; and

(d) Has made a commitment to return to the field of vocational education upon completion of education provided through the Vocational Education Leadership Development Award Program.

(Authority: 20 U.S.C. 2414(b))

§ 417.41 How does an individual apply to an institution for a leadership development award?

To apply for an award, an individual shall—

(a) Follow the application procedures established by an institution participating under this part; and

(b) Provide sufficient information concerning his or her employment experience and academic background to enable the institution to determine whether the individual is eligible to receive an award, taking into consideration the standards in § 417.40.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(b))

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

§ 417.50 May a course of study be interrupted?

The Secretary approves a leadership development award only for study in the field and at the institution specified in an individual's application. The Secretary or the institution discontinues the leadership development award if the individual changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(b))

§ 417.51 Under what conditions must a leadership development award be returned?

(a) An individual shall repay to the institution all, or a prorated portion, of a leadership development award, as determined by the Secretary, if the individual—

(1) Withdraws from an approved institution of higher education;

(2) Is terminated or expelled from an approved institution of higher education; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements stated in § 417.34(a).

(b) An individual shall repay all, or a portion of, amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(b))

§ 417.52 What is the repayment schedule?

(a) A recipient of a leadership development award required to repay all, or a prorated portion, of the award shall begin repayments to the institution within one month of the date he or she ceases to be enrolled as a full-time student at an institution in the leadership development program.

(b) A recipient of a leadership development award must repay to the institution the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(b))

§ 417.53 What interest is charged?

(a) The Secretary charges a recipient of a leadership development award interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 417.54.

(Authority: 20 U.S.C. 2414(b))

§ 417.54 Under what circumstances is repayment deferred?

Upon request from the recipient of a leadership development award, the Secretary may defer repayment if the recipient—

(a) Re-enrolls as a full-time student at a participating institution;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(b))

§ 417.55 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient of a leadership development award shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(b))

20. A new part 418 is added to read as follows:

PART 418—VOCATIONAL EDUCATOR TRAINING FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

418.1 What is the Vocational Educator Training Fellowship Program?
418.2 Who is eligible for a fellowship?
418.3 What does a fellowship include?
418.4 What regulations apply?
418.5 What definitions apply?

Subpart B—How Does an IHE Obtain Approval of Its Application for Participation?

418.10 How does the Secretary approve IHEs for participation?

Subpart C—How Does An Individual Apply for a Fellowship?

418.20 Where does an individual apply for a fellowship?

Subpart D—How Does the Secretary Select Fellows?

418.30 How does the Secretary select fellows?
418.31 What criteria must IHEs consider in nominating fellows?
418.32 What additional factors does the Secretary consider in selecting fellows?
418.33 How are funds distributed to a fellow?

Subpart E—What Conditions Must be Met by a Fellow?

418.40 Where may fellows study?
418.41 What are the requirements for an individual to continue to receive a fellowship?
418.42 May fellowship tenure be interrupted?
418.43 May fellows make changes in institutions or fields of study?
418.44 Under what circumstances must a fellowship be discontinued?
418.45 Under what conditions must fellowship payments be repaid?
418.46 What is the repayment schedule?
418.47 What interest is charged?
418.48 Under what circumstances is repayment deferred?
418.49 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(c), unless otherwise noted.

Subpart A—General

§ 418.1 What is the Vocational Educator Training Fellowship Program?

Under the Vocational Educator Training Fellowship Program, the Secretary provides fellowships to individuals through approved institutions of higher education (IHEs) to—

(a) Meet the need to provide adequate numbers of teachers and related classroom instructors in vocational education who are technologically current in their fields;

(b) Take full advantage of the education that has been provided to already certified teachers who are unable to find employment in their fields of training and of individuals employed in industry who have skills and experience in vocational fields; and

(c) Encourage more instructors from minority groups and teachers with skills and experience instructing individuals of limited English proficiency to become vocational education teachers.

(Authority: 20 U.S.C. 2414(c)(1))

§ 418.2 Who is eligible for a fellowship?

Fellowships are awarded to individuals (especially minority instructors and instructors with

experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals) who—

(a)(1)(i) Are teachers of vocational education students and need an opportunity to improve or maintain technological skills;

(ii) Are certified by a State, or were so certified during the 10-year period preceding their application for a fellowship under this part, as teachers in secondary schools, area vocational education schools or institutes, or in community or junior colleges; and

(iii) Have skills and experiences in vocational fields so that those individuals can be trained to be teachers of vocational education students; or

(2) Are employed in agriculture, business, or industry (and may or may not hold a baccalaureate degree) and have skills and experience in vocational fields for which there is a need for vocational educators;

(b) Have been accepted in a program to become a vocational educator by an institution of higher education approved by the Secretary; and

(c) Have made a commitment to work in the field of vocational education upon completion of the fellowship provided under this program.

(Authority: 20 U.S.C. 2414(c)(2))

§ 418.3 What does a fellowship include?

(a) A fellowship may not be paid for more than two years.

(b) *Allowable costs.* A fellow may use fellowships under this program for—

(1) Tuition and non-refundable fees—the normal and usual costs associated with the course of study;

(2) Books;

(3) Travel to a field study site; and

(4) Subsistence and other expenses of the fellow and his or her dependents.

(c) The Secretary announces in the Federal Register the maximum amounts for each allowable cost under a fellowship. These maximum amounts are based on the prevailing amounts for costs during the past 12 months, plus projected inflationary increases.

(Authority: 20 U.S.C. 2414(c))

§ 418.4 What regulations apply?

The following regulations apply to the Vocational Educator Training Fellowship Program:

(a) The regulations in this part 418.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(c))

§ 418.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following terms used in this regulation are defined in 34 CFR 417.5:

Dependent
Full-time course of study
Satisfactory proficiency

(c) The following definitions also apply to this part:

Fellow means the individual recipient of a fellowship under this part.

Fellowship means an award made to an individual for vocational educator training under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

§ 418.10 How does the Secretary approve IHEs for participation?

The Secretary considers for participation only IHEs that—

(a) Offer a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, including resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education; and

(b) Will enroll in its vocational education program individuals receiving fellowships under this part so that those individuals receive the same quality of education and training provided for undergraduate students at the institution who are preparing to become vocational education teachers.

(Authority: 20 U.S.C. 2424(c))

Subpart C—How Does an Individual Apply for a Fellowship?

§ 418.20 Where does an individual apply for a fellowship?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) The applicant shall provide sufficient information in the application as required by institution concerning his or her employment and academic background and proposed course of study, to enable an institution and the Secretary to determine whether the individual—

(1) Meets the eligibility requirements indicated in § 418.2; and

(2) Should be selected for a fellowship under this part.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(c))

Subpart D—How Does the Secretary Select Fellows?

§ 418.30 How does the Secretary select fellows?

In selecting recipients of fellowships, the Secretary—

(a) Gives preference to individuals seeking to become teachers or improve their skills in the areas identified in § 418.32(b); and

(b) Takes into consideration the rank orders prepared by participating IHEs.

(Authority: 20 U.S.C. 2414(c)(7))

§ 418.31 What criteria must IHEs consider in nominating fellows?

In rank ordering applicants for fellowships, an IHE shall consider the following criteria in addition to its admissions standards:

(a) *Eligibility.* Whether the applicant meets the requirements in § 418.2, especially with regard to minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals.

(b) *Academic ability.* The quality of the applicant's academic record, including—

(1) Transcripts of grades earned in secondary school and, if appropriate, postsecondary education;

(2) Results earned on specific skill aptitude tests; and

(3) Results of other tests, if appropriate.

(c) *Vocational skills.* Evidence of the applicant's performance in a work situation requiring vocational skills, including—

(1) Letters of recommendations from previous employers or others, as appropriate;

(2) Results of National Occupational Competency Testing Institute tests, if appropriate;

(3) Certificates or diplomas, as appropriate; and

(4) Work related experience, including teaching, if appropriate.

(d) *Community human relations skills.* Evidence of the applicant's skills in interpersonal relations, including experience with—

(1) Community groups;

(2) Volunteer groups;

(3) Work-related organizations;

(4) Members of minority groups;

(5) Economically or educationally disadvantaged individuals, or individuals with disabilities; and

(6) Adult and juvenile criminal offenders; and other groups, as appropriate.

(e) *National need.* As stated by the applicant in writing, the applicant's goals, objectives, and aspirations in vocational education, and their relationship to national needs with particular reference to—

(1) Technological skill upgrading; and

(2) Increasing the number of instructors who—

(i) Are members of minority groups; and

(ii) Possess skills and experience in teaching individuals who are economically disadvantaged, individuals with disabilities, individuals of limited English proficiency, and adult and juvenile criminals.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(c))

§ 418.32 What additional factors does the Secretary consider in selecting fellows?

The Secretary may choose fellows out of rank order if doing so would—

(a) Improve the equitable distribution of fellowships among the States, taking into account such factors as—

(1) The State's vocational education enrollments; and

(2) The need in the State for additional instructors of vocational education students, especially minority educators and individuals with skills and experience in teaching individuals of limited English proficiency, individuals who are economically disadvantaged, individuals with disabilities, and adult and juvenile criminal offenders; and

(b) Increase the number of trained persons in the areas of teaching in vocational education—

(1) In which additional personnel are needed;

(2) That will likely have need of additional personnel in the future; and

(3) In which technological upgrading may be especially critical.

(Authority: 20 U.S.C. 2414 (c) (2), (4), and (6)(A))

§ 418.33 How are funds distributed to a fellow?

(a) Funds are disbursed by the participating IHE in which a fellow is enrolled.

(b) A participating institution shall award to each fellow a fellowship that covers costs described in § 418.3.

(c) An institution shall—

(1) Pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship;

(2) Make a payment only to a fellow who meets the requirements in § 418.41;

(3) Make appropriate adjustments of any overpayment or underpayment to a fellow; and

(4) Ensure that a fellow repays all or a prorated portion of an award in accordance with the provisions in §§ 418.45 through 418.49.

(d) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(Authority: 20 U.S.C. 2414(c))

Subpart E—What Conditions Must Be Met by a Fellow?

§ 418.40 Where may fellows study?

Fellows may use fellowships under this part only at institutions that have been approved under this part.

(Authority: 20 U.S.C. 2414(c))

§ 418.41 What are the requirements for an individual to continue to receive a fellowship?

A participating IHE shall continue to pay fellowships only during a period in which the fellow is—

(a) Maintaining satisfactory proficiency;

(b) Engaging in full-time study in the field of vocational education in an institution of higher education; and

(c) Not engaging in gainful employment other than part-time employment with the institution.

(Authority: 20 U.S.C. 2414(c)(5))

§ 418.42 May fellowship tenure be interrupted?

(a) With prior approval of the Secretary, a fellow may interrupt periods of vocational educator study under the fellowship for a period of up to 12 months for the purpose of work, travel, or independent study away from the institution of higher education at which the fellow is enrolled only if the—

(1) Work, travel, or independent study is supportive of the fellow's academic program;

(2) Leave of absence is approved by the institution at which the fellow is enrolled; and

(3) IHE certifies, to the Secretary in advance of the leave, that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(b) An institution may not make fellowship payments under this part for a period of time during which a fellowship is interrupted.

(Authority: 20 U.S.C. 2414(c))

§ 418.43 May fellows make changes in institutions or fields of study?

The Secretary approves a fellowship only for study in the field of study and at the institution specified in the fellow's application. The Secretary or the institution discontinues the fellowship if the fellow changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(c))

§ 418.44 Under what circumstances must a fellowship be discontinued?

(a) An institution shall discontinue a fellowship—

(1) If a fellow fails to comply with the provisions under this part; and

(2) Only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(b) If a fellowship is vacated or discontinued the institution shall notify the Secretary. The Secretary—

(1) Allows the fellowship to follow the fellow to another participating IHE if the remaining fellowship time comprises at least one full academic quarter, semester, trimester, or summer session and the fellow maintains eligibility for a fellowship; or

(2) Permits the institution to award unexpended funds from a fellowship to an alternate fellow at that institution for a period of study that does not exceed the term or amount of the original fellowship.

(3) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(c))

§ 418.45 Under what conditions must fellowship payments be repaid?

(a) A fellow shall repay to the institution the entire fellowship, or a prorated portion, as determined by the Secretary, if the fellow—

(1) Withdraws from an institution;

(2) Is terminated or expelled from an institution; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements in this part.

(b) A fellow shall refund all or a portion of amounts received during the academic term in which the individual

no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(c))

§ 418.46 What is the repayment schedule?

(a) A fellow required to repay all, or a prorated portion, of a fellowship shall begin repayments within one month of the date he or she ceases to be enrolled as a full-time student at an IHE in the fellowship program.

(b) A fellow must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(c))

§ 418.47 What interest is charged?

(a) The Secretary charges a fellow interest on the unpaid balance owed by the fellow in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 418.48.

(Authority: 20 U.S.C. 2414(c))

§ 418.48 Under what circumstances is repayment deferred?

Upon request from a fellow, the Secretary may defer repayment if the fellow—

(a) Re-enrolls as a full-time student at a participating IHE;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(c))

§ 418.49 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a fellow shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(c))

21. A new Part 419 is added to read as follows:

PART 419—INTERNSHIPS FOR GIFTED AND TALENTED VOCATIONAL EDUCATION STUDENTS PROGRAM

Subpart A—General

Sec.

419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?
419.2 Who is eligible for an internship?
419.3 What activities may the Secretary fund?
419.4 What regulations apply?
419.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

419.20 What are the procedures for applying for an internship?
419.21 How does the Secretary evaluate an application for an internship?
419.22 What selection criteria does the Secretary use?
419.23 What other factors may the Secretary consider?
419.24 How does the Secretary assign interns?
419.25 How is the amount of a stipend determined?
419.26 How is a stipend distributed?

Subpart D—What Conditions Must be Met By an Intern?

419.30 May internships be interrupted?
419.31 Under what conditions may the Secretary discontinue an internship?
419.32 Under what conditions must internship payments be returned?
419.33 What is the repayment schedule?
419.34 What interest is charged?
419.35 Under what circumstance is repayment deferred?
419.36 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(d), unless otherwise noted.

Subpart A—General

§ 419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?

The Internships for Gifted and Talented Vocational Education Students Program provides internships to meet the need of attracting gifted and talented vocational education students into further study and professional development in the field of vocational education.

(Authority: 20 U.S.C. 2414(d)(1))

§ 419.2 Who is eligible for an internship?

A gifted and talented student from a vocational education secondary or postsecondary program is eligible for an internship under this program if the student is recommended—

(a) As gifted and talented by a vocational educator at the secondary or postsecondary school the student attends; and

(b) By a State director of vocational education.

(Authority: 20 U.S.C. 2414(d)(2))

§ 419.3 What activities may the Secretary fund?

The Secretary provides internships, of up to nine months, for gifted and talented students from vocational education secondary and postsecondary programs to work as interns for Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(d)(2)(A))

§ 419.4 What regulations apply?

The following regulations apply to the Internships for Gifted and Talented Vocational Education Students Program:

(a) The regulations in this part 419.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(d))

§ 419.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Gifted and talented student means a student who gives evidence of high performance capability in the field of vocational education, taking into account theoretical knowledge, applied skills, and leadership potential.

Intern means a gifted and talented student who receives payments under this program.

Sponsor means a Federal or State agency, nationally recognized vocational education association, or National Center for Research in Vocational Education that has agreed to provide further study and professional development to interns under this program.

(Authority: 20 U.S.C. 2414(d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

§ 419.20 What are the procedures for applying for an internship?

(a) A gifted and talented vocational education student shall apply to the Secretary for an internship in response to an application notice published by the Secretary in the **Federal Register**.

(b) A student applying for an internship shall—

(1) Obtain a recommendation as gifted and talented from a vocational educator at the secondary or postsecondary school the student attends. The

recommendation must state why the student is considered gifted and talented. The recommendation must be attached to the student's application;

(2) Submit to the State director of vocational education for the State in which the student attends a vocational education program, a copy of his or her application;

(3) Indicate, in the application, a first and second choice of agencies or organizations where the student would like to be an intern; and

(4) Submit with the application, an agreement to follow the code of conduct of the agency or organization that will sponsor the intern.

(c) The Secretary considers for internships only students recommended by State directors of vocational education. The State director's recommendation must include an assurance that—

(1) The student is available to take part in this program during the specified dates;

(2) A parent or guardian of a student who has not reached the age of majority in a State has formally consented for the student to take part in this program; and

(3) The secondary or postsecondary school the student attends has provided authorization for the student to participate in this program, if the internship will interfere with school attendance.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(d))

§ 419.21 How does the Secretary evaluate an application for an internship?

(a) The Secretary evaluates an application on the basis of the criteria in § 419.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 419.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 419.22.

(Authority: 20 U.S.C. 2414(d))

§ 419.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Goal of the internship.* (30 points) The Secretary reviews each application to determine the extent to which there—

(1) Is a clearly stated goal to be achieved during the internship. This goal must be directly related to the present area of study the student is pursuing; and

(2) Are measurable objectives to be met during the internship.

(b) *Internship plan.* (40 points) The Secretary reviews each application to determine the quality of the internship plan, including—

(1) Choice of internship site;

(2) Statement of understanding from the proposed sponsor, including a description of the—

(i) Sponsoring agency's internship work plan, including specific assignments and learning experiences; and

(ii) Supervision to be provided to the intern through the sponsoring agency; and

(3) The length and description of the internship.

(c) *Budget.* (15 points) The Secretary reviews each application to determine the extent to which the intern has identified expenses that are reasonable and adequate to support the proposed internship.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(d))

§ 419.23 What other factors may the Secretary consider?

(a) After evaluating the applications according to the criteria in § 419.22, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of internships funded under this program.

(Authority: 20 U.S.C. 2301, 2414(d))

§ 419.24 How does the Secretary assign interns?

(a) In assigning students to internships, the Secretary considers the following:

(1) The opportunities to be provided by approved agencies or organizations.

(2) The goals of potential interns.

(3) The intern's choice of agencies or organizations.

(4) The availability of interns.

(b) In consultation with approved sponsors, the Secretary assigns interns to an agency or organization that will provide the best opportunities for an intern to accomplish his or her goals.

(Authority: 20 U.S.C. 2414(d))

§ 419.25 How is the amount of a stipend determined?

An intern's stipend is based on a subsistence allowance and other expenses of the intern, such as necessary travel expenses related to the internship, consistent with 5 U.S.C. chapter 57.

(Authority: 20 U.S.C. 2414(d))

§ 419.26 How is a stipend distributed?

The Secretary pays an intern's stipend through the agency or organization sponsoring the internship. The sponsoring agency or organization must enter into an agreement with the Secretary to establish a payment schedule.

(Authority: 20 U.S.C. 2414(d))

Subpart D—What Conditions Must be Met by an Intern?

§ 419.30 May internships be interrupted?

An intern may request a leave of absence from the Secretary for a period no longer than three months. Leave of absence is permitted at the Secretary's discretion, but only if the sponsoring agency or organization certifies that the intern is eligible to resume his or her internship at the end of the leave of absence.

(Authority: 20 U.S.C. 2414(d))

§ 419.31 Under what conditions may the Secretary discontinue an internship?

(a) The Secretary may discontinue an internship, if the intern fails to—

(1) Comply with the provisions under this part, including failure to obtain an approved leave of absence under § 419.30, or with the terms and conditions of the internship award;

(2) Disclose any information that substantially affects his or her financial need for a cost item included in the stipend; or

(3) Report any change in his or her academic status.

(b) The Secretary discontinues an internship only after providing reasonable notice and an opportunity for the intern to rebut, in writing or in an informal meeting with the responsible official in the Department, the basis for the decision.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(d))

§ 419.32 Under what conditions must internship payments be returned?

(a) An intern who officially or unofficially withdraws from an internship or is expelled from an agency or organization before completion of an internship shall refund to the Secretary

all or a prorated portion of the internship payments that have been received, as determined by the Secretary.

(b) If the individual is no longer eligible for an internship, the intern must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program. The amount of unexpended funds is determined by prorating the amount received for the internship in proportion to the amount of the internship during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(d))

§ 419.33 What is the repayment schedule?

(a) An intern required to repay all or a portion of internship payments shall begin repayments within one month of the date he or she ceases to be an intern.

(b) An intern must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(d))

§ 419.34 What interest is charged?

(a) The Secretary charges an intern interest on the unpaid balance owed by an intern in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the intern is required to commence repayment; or

(2) During which repayment has been deferred under § 419.35.

(Authority: 20 U.S.C. 2414(d))

§ 419.35 Under what circumstance is repayment deferred?

The Secretary may defer repayment if an intern—

(a) Resumes an internship;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(d))

§ 419.36 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, an intern shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(d))

PART 420—[RESERVED]

22. Part 420 is [Reserved].

23. A new part 421 is added to read as follows:

PART 421—BUSINESS AND EDUCATION STANDARDS PROGRAM

Subpart A—General

Sec.

421.1 What is the Business and Education Standards Program?
421.2 Who is eligible for an award?
421.3 What activities may the Secretary fund?
421.4 What regulations apply?
421.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

421.20 How does the Secretary evaluate an application?
421.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

421.30 What is the cost-sharing requirement?

Authority: 20 U.S.C. 2416, unless otherwise noted.

Subpart A—General

§ 421.1 What is the Business and Education Standards Program?

The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

§ 421.2 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) Industrial trade associations.

(b) Labor organizations.

(c) National joint apprenticeship committees.

(d) Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

(Authority: 20 U.S.C. 2416)

§ 421.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects that organize and operate business-labor-education technical committees that propose national standards for competencies in industries and trades, including standards for—

(a) Major divisions or specialty areas identified within occupations studied;

(b) Minimum hours of study to be competent in those divisions or specialty areas;

(c) Minimum tools and equipment required in those divisions or specialty areas;

(d) Minimum qualifications for instructional staff; and

(e) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas.

(Authority: 20 U.S.C. 2416)

§ 421.4 What regulations apply?

The following regulations apply to the Business and Education Standards Program:

(a) The regulations in this part 421.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2416)

§ 421.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2416)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 421.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperation agreement on the basis of the criteria in § 421.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 421.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 421.21.

(Authority: 20 U.S.C. 2416)

§ 421.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the

extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in those divisions or specialty areas;

(iv) Minimum tools and equipment required in those divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas; and

(vi) Minimum qualifications for instructional staff in those divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this section as a part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national standards for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and ending dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the business-labor-education technical committees will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate the business-labor-education technical committees effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with education and industrial trade associations, labor organizations, and businesses;

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) The experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available;

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades; and

(4) Provisions for encouraging the adoption and use of the proposed standards by education and training programs.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2416)

Subpart D—What Conditions Must Be Met After an Award?

§ 421.30 What is the cost-sharing requirement?

(a) The Secretary pays no more than 50 percent of the cost of a project.

(b) Each recipient of an award under this part shall provide at least 50 percent of the cost of the business-labor-education technical committees established under the award.

(Authority: 20 U.S.C. 2416(c))

24. A new part 422 is added to read as follows:

PART 422—EDUCATIONAL PROGRAM FOR FEDERAL CORRECTIONAL INSTITUTIONS

Subpart A—General

Sec.

422.1 What is the Educational Program for Federal Correctional Institutions?
422.2 Who is eligible for an award?
422.3 What activities may the Secretary fund?
422.4 What regulations apply?
422.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

422.20 How does the Secretary evaluate an application?
422.21 What selection criteria does the Secretary use?
422.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

422.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2417, unless otherwise noted.

Subpart A—General

§ 422.1 What is the Educational Program for Federal Correctional Institutions?

The Educational Program for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions.

(Authority: 20 U.S.C. 2417(a))

§ 422.2 Who is eligible for an award?

(a) Awards are provided to consortia of—

(1) A Federal correctional institution; and

(2) An educational institution, a community-based organization of demonstrated effectiveness, a business, or an industry.

(b) A consortium must include a Federal correctional institution and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) Members of a consortium shall apply jointly to the Secretary for funds.

(2) The members of a consortium shall enter into an agreement, in the form of a single document signed by all members, designating the Federal correctional institution as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2417(a))

§ 422.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements that may be used for—

(a) Basic education programs with an emphasis on literacy instruction;

(b) Vocational training programs;

(c) Guidance and counseling programs; and

(d) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after the offenders are released from correctional institutions.

(Authority: 20 U.S.C. 2417(b))

§ 422.4 What regulations apply?

The following regulations apply to the Educational Program for Federal Correctional Institutions:

(a) The regulations in this part 422.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2417)

§ 422.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2417)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 422.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 422.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 422.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criteria.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 422.21.

(Authority: 20 U.S.C. 2417)

§ 422.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (20 points) The Secretary reviews each application to assess the need for and the soundness of the rationale for the project, including—

(1) A clear description of the need for the proposed project;

(2) Specific evidence of the need for the project;

(3) A description of any ongoing and planned activities in the Federal correctional institution relative to the need; and

(4) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals, including measurable goals for learner enrollment and completion in each academic skill and occupation for which training is to be provided;

(2) Definitions of successful program completion (or a description of how successful program completion will be defined and reported to the Secretary) for each academic skill and occupation for which training is to be provided. Successful program completion must be defined in terms of the academic and vocational competencies expected of enrollees prior to successful completion, and any academic or work credentials expected to be acquired upon completion;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes a description of the respective roles of each member of the consortium in carrying out the plan;

(4) The extent to which the objectives are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and pre- and post-release services for participants;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(6) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are necessary and reasonable in relation to the objectives of the project and the numbers of participants to be served; and

(3) The budget narrative justifies the proposed expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to

determine the quality of the evaluation plan, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment and completion of participants by sex, racial or ethnic group and, if appropriate, by level of English proficiency, for each academic skill and occupation for which training is provided;

(2) The plan identifies at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2417)

§ 422.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 422.21, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2301; 2417)

Subpart D—What Conditions Must Be Met After an Award?

§ 422.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment and completion by sex, racial or ethnic group, and, if appropriate, by level of English proficiency for each academic skill and occupation for which training has been provided.

(d) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job enhancement, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic skills competencies.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2417)

25. A new part 423 is added to read as follows:

PART 423—VOCATIONAL EDUCATION DROPOUT PREVENTION PROGRAM

Subpart A—General

Sec.

423.1 What is the Vocational Education Dropout Prevention Program?
423.2 Who is eligible for an award?
423.3 What activities may the Secretary fund?
423.4 What regulations apply?
423.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

423.20 How does the Secretary evaluate an application?
423.21 What selection criteria does the Secretary use?
423.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

423.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2418, unless otherwise noted.

Subpart A—General

§ 423.1 What is the Vocational Education Dropout Prevention Program?

The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school.

(Authority: 20 U.S.C. 2418)

§ 423.2 Who is eligible for an award?

(a) Awards are provided to partnerships between—

(1) Local educational agencies or area vocational education schools; and

(2) Institutions of higher education or public or private nonprofit organizations that have an established record of vocational education strategies that prevent students from dropping out of school.

(b) Partnerships formed for the purpose of receiving an award under this program must include as partners at least one of the types of entities in paragraph (a)(1) of this section and one of the types of entities in paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2418(a))

§ 423.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate a vocational education program designed to prevent students from dropping out of secondary school.

(b) Projects assisted under this part must—

(1) Serve special populations, including significant numbers of economically disadvantaged, dropout-prone youth;

(2) Provide inservice training for teachers and administrators in dropout prevention; and

(3) Disseminate information relating to successful dropout prevention strategies and programs through appropriate dissemination networks such as the

National Dropout Prevention Network, the National Dropout Prevention Center, and the Center on Adult, Career and Vocational Education of the Educational Resources Information Clearinghouse.

(Authority: 20 U.S.C. 2418)

§ 423.4 What regulations apply?

The following regulations apply to the Vocational Education Dropout Prevention Program:

(a) The regulations in this part 423.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2418)

§ 423.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2418)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 423.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 423.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 423.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 423.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 423.21, the Secretary awards up to 10 points to applications that propose particularly effective activities that—

(1) Provide the special support services necessary to help individual students successfully complete the vocational education program such as mentoring, basic skills education, and services that address barriers to learning; and

(2) Use measures to integrate basic and academic skills instruction with work experience and vocational education.

(Authority: 20 U.S.C. 2418)

§ 423.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program design.* (15 points) The Secretary reviews each application to assess the effectiveness of the project including the quality of the—

(1) Vocational program dropout prevention model to be used in carrying out the purposes of this program, including services to be provided, who will provide them, and how they will be provided;

(2) Proposed methodology, specifically, the extent to which the project will include—

(i) Training in appropriate vocational skill areas;

(ii) A thorough assessment of individual student needs;

(iii) Flexibility in the structure of the delivery system to be used (e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios);

(iv) Active recruitment;

(v) Thorough assessment and feedback on student progress;

(vi) Individualized treatment;

(vii) Tutoring and mentoring;

(viii) Adjustments for child care;

(ix) Coordination of vocational instruction, academic instruction, and counseling services;

(x) Coordination with other agencies providing services to dropouts or potential dropouts;

(xi) Relevant work-related experience;

(xii) Transportation from school to work;

(xiii) Parental involvement;

(xiv) Community and business involvement; or

(xv) Inservice training for teachers and administrators in dropout prevention.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed dropout prevention program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs including military service; and

(iv) Successful matriculation of students to a variety of postsecondary educational programs.

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Proposes a project that will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Management plan.* (15 points) The Secretary reviews each application to assess the quality of the management plan for the project that includes the following elements:

(1) A clear chain of command, including how staff will be managed and how coordination among staff will be accomplished.

(2) Timelines for each activity.

(3) A clear description of the goals, objectives, and activities, and how each builds on the others.

(4) An effective strategy for the use of the resources and personnel from the grant to achieve each objective.

(5) A detailed description of how subcontracts will be awarded, monitored, and evaluated, if subcontracts are to be used.

(d) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications (as described in a job description or a résumé), in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine—

(1) The quality and comprehensiveness of the independent evaluation plan for the project, including the extent to which the plan includes activities during the formative stages of the project to help to guide and improve

the project, as well as a final evaluation that includes summary data and recommendations;

(2) The extent to which the plan—

(i) Is clearly explained and is appropriate to the project;

(ii) To the extent possible, is objective and will produce data that are quantifiable;

(iii) Identifies expected outcomes of the participants and how those outcomes will be measured;

(iv) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(v) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(3) The qualifications (as described in a job description or a résumé) of the independent evaluator to be used in the project.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative explains and justifies each budget item in detail;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Demonstration and dissemination plan.* (10 points) The Secretary reviews each application to assess the quality of the plan for demonstrating and disseminating information about the project, including the—

(1) Quality of the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Target groups, timelines, and responsibilities for each dissemination activity, including provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) Description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available;

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(6) Description of the cost and logistical provisions to be made if there is an intent to engage in a subcontract with one or more of the national dissemination entities described in § 423.3(b)(3) for dissemination services.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2418)

§ 423.22 What additional factors may the Secretary consider?

After evaluating applications according to the criteria in § 423.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2418)

Subpart D—What Conditions Must Be Met After an Award?

§ 423.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2418)

26. A new part 424 is added to read as follows:

PART 424—MODEL CENTERS OF REGIONAL TRAINING FOR SKILLED TRADES PROGRAM

Subpart A—General

Sec.

424.1 What is the Model Centers of Regional Training for Skilled Trades Program?
424.2 Who is eligible for an award?
424.3 What activities may the Secretary fund?
424.4 What regulations apply?
424.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

424.20 How does the Secretary evaluate an application?
424.21 What selection criteria does the Secretary use?
424.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

424.30 What are the evaluation requirements?
424.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2419, unless otherwise noted.

Subpart A—General

§ 424.1 What is the Model Centers of Regional Training for Skilled Trades Program?

The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide—

(a) Training for skilled tradesmen within a region serving several States; and

(b) Technical assistance for programs that train skilled tradesmen within a region serving several States.

(Authority: 20 U.S.C. 2419)

§ 424.2 Who is eligible for an award?

Entities proposing to develop a regional model center or existing regional model centers that provide training for skilled tradesmen within a region serving several States and technical assistance for programs that train skilled tradesmen within a region serving several States are eligible for awards under this program.

(Authority: 20 U.S.C. 2419(a))

§ 424.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to model centers for regional training for skilled trades. Each project assisted by the Secretary must—

(a) Provide training and career counseling for skilled tradesmen in areas of skill shortages or projected skill shortages;

(b) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(c) Upgrade specialized craft training; and

(d) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities, and ex-criminal offenders to trade occupations and training.

(Authority: 20 U.S.C. 2419(b))

§ 424.4 What regulations apply?

The following regulations apply to the Model Centers of Regional Training for Skilled Trades Program:

(a) The regulations in this part 424.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2419)

§ 424.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) As used in this part, the term "skilled trades" includes, among other occupations, "construction trades" and "firefighting," which are defined as follows:

Construction trades means a summary of groups of instructional programs that prepare individuals to erect, install, maintain, and repair buildings, highways, airports, missile sites, and other structures using materials such as metal, wood, stone, brick, glass, concrete, and composition substances. The term includes instruction in cost estimating; cutting, fastening, and fitting various materials; the use of hand and power tools; and in following technical specifications and blueprints.

Firefighting means an instructional program that prepares individuals to fight fires, and control the outbreak of fires. The term includes instruction in fire department organization; the use of water and other materials in firefighting and various kinds of equipment such as extinguishers, pumps, hoses, ropes, ladders, gas masks, hydrants, and standpipe and sprinkler systems; entry and rescue and salvage practices and equipment; and fire and arson inspection and investigation techniques.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 424.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 424.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 424.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 424.21.

(e) In addition to points awarded under § 424.21, the Secretary may award up to five points to applications that propose particularly effective training in the masonry trades.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

§ 424.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed model center of regional training for skilled trades and how well the project will—

(1) Provide training and career counseling for skilled tradesmen in areas of labor or skill shortages or projected labor or skill shortages;

(2) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(3) Upgrade specialized craft training; and

(4) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities and ex-criminal offenders to trade occupations and training.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed national model center of regional training for skilled trades on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) Placement of students in jobs, including military service; and

(iii) Successful matriculation of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of training for skilled tradesmen;

(3) Proposes to use innovative techniques that address problems and needs associated with training skilled tradesmen and that are of national significance; and

(4) Is likely to make a significant contribution to training skilled tradesmen in areas of skill shortages or projected skill shortages in the region in which the project will be located.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the skilled trades training methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire regional model center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2419)

§ 424.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 424.21, the Secretary considers whether the most highly rated applications are equitably distributed among the skilled trades with shortages.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under this program among the skilled trades with shortages.

(Authority: 20 U.S.C. 2419(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 424.30 What are the evaluation requirements?

(a) Each grant recipient shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2419)

§ 424.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2419)

27. Part 425 is added to read as follows:

PART 425—DEMONSTRATION PROJECTS FOR THE INTEGRATION OF VOCATIONAL AND ACADEMIC LEARNING PROGRAM

Subpart A—General

Sec.

425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?
425.2 Who is eligible for an award?
425.3 What activities may the Secretary fund?
425.4 What regulations apply?
425.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

425.20 How does the Secretary evaluate an application?
425.21 What selection criteria does the Secretary use?
425.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

425.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2420, unless otherwise noted.

Subpart A—General

§ 425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?

The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning.

(Authority: 20 U.S.C. 2420(a))

§ 425.2 Who is eligible for an award?

(a) The following entities are eligible for an award under the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(1) An institution of higher education.

(2) An area vocational education school.

(3) A secondary school funded by the Bureau of Indian Affairs.

(4) A State board of vocational education.

(5) A public or private nonprofit organization.

(6) A local educational agency.

(b) Consortia composed of the entities described in paragraph (a) of this section also are eligible for awards under this program.

(Authority: 20 U.S.C. 2420(a))

§ 425.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers of vocational education students and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) under section 1562 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2962), or, in the case of projects that will be funded for less than three years, disseminating information about the design of a project necessary for effective integrative strategies to be supported, so that they may be disseminated through the NDN.

(b) Each project supported under this part must serve—

(1) Individuals who are members of special populations;

(2) Vocational students in secondary schools;

(3) Vocational students at postsecondary institutions;

(4) Individuals enrolled in adult programs; or

(5) Single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2420(a), (b)(3) and (4))

§ 425.4 What regulations apply?

The following regulations apply to the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(a) The regulations in this part 425.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420)

§ 425.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 425.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 425.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 425.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 425.21.

(Authority: 20 U.S.C. 2420)

§ 425.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning; and

(2) The quality of the services that the project will provide to—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at postsecondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements in § 425.30;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curricular developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will provide a comparison between intended and observed results,

and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(8) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420)

§ 425.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 425.21, the Secretary determines whether the most highly rated applications—

(1) Are equitably distributed throughout the Nation;

(2) Offer significantly different approaches to integrating vocational and academic curricula; and

(3) Serve individuals described in § 425.3(b).

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of, diversity of approaches in, or the diversity of populations to be served by projects funded under this program.

(Authority: 20 U.S.C. 2420(b))

Subpart D—What Conditions Must Be Met After an Award?

§ 425.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) Each grantee shall employ adequate measures to evaluate the effectiveness of the curriculum approaches supported by the project.

(d) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(e) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(f) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420(b)(5))

28. Part 426 is added to read as follows:

PART 426—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.

426.1 What is the Cooperative Demonstration Program?
426.2 Who is eligible for an award?
426.3 What activities may the Secretary fund?
426.4 What activities does the Secretary fund under the Demonstration Projects?
426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?
426.6 What activities does the Secretary fund under the Community-Based Organization Projects?
426.7 What activities does the Secretary fund under the Agriculture Action Centers?
426.8 What regulations apply?

Sec.

426.9 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

426.20 How does the Secretary evaluate an application?
426.21 What selection criteria does the Secretary use for the Demonstration Projects?
426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?
426.23 What selection criteria does the Secretary use for the Community-Based Organization Projects?
426.24 What selection criteria does the Secretary use for Agriculture Action Centers?
426.25 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

426.30 What is the requirement regarding cost-sharing?
426.31 What is the requirement regarding dissemination?
426.32 What are the evaluation requirements?
426.33 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2420a, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Cooperative Demonstration Program?

The Cooperative Demonstration Program provides financial assistance for—

(a) Model projects providing improved access to quality vocational education programs for individuals who are members of special populations and for men and women seeking nontraditional occupations;

(b) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(c) Projects to overcome national skill shortages;

(d) Projects that develop consumer and homemaking education programs, including child growth and development centers;

(e) Projects that assist disadvantaged youths in preparing for technical and professional health careers; and

(f) Model projects providing access to vocational education programs through agriculture action centers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.2 Who is eligible for an award?

(a) The following entities are eligible to apply for an award for activities described in §§ 426.4, 426.5, and 426.7:

(1) State educational agencies.

(2) Local educational agencies.

(3) Postsecondary educational institutions.

(4) Institutions of higher education.

(5) Other public and private agencies, organizations, and institutions.

(b)(1) Awards for activities described in § 426.6 are provided to partnerships between—

(i) Community-based organizations; and

(ii) Local schools, institutions of higher education, and businesses.

(2) A partnership formed for the purpose of receiving an award under § 426.6 shall include as partners at least one community-based organization and at least one entity from the groups listed in paragraph (b)(1)(ii) of this section, and may include more than one entity from each group.

(3) The partners shall apply jointly to the Secretary for an award under this part.

(4) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420a(a))

§ 426.3 What activities may the Secretary fund?

(a) The Secretary supports, directly or through grants, cooperative agreements, or contracts, the following types of projects:

(1) *Demonstration Projects.* The Secretary supports model projects providing improved access to high quality vocational education for members of special populations and men and women seeking to enter non-traditional occupations, projects that are models of successful cooperation between the private sector and public agencies in vocational education, and projects to overcome national skill shortages, as described in § 426.4.

(2) *Program for Model Consumer and Homemaking Education Projects.* The Secretary supports model projects that improve instruction and curricula related to consumer and homemaking skills, as described in § 426.5.

(3) *Community-Based Organization Projects.* The Secretary supports community-based organizations in partnerships with entities listed in § 426.2(b)(1)(ii), to operate projects that assist disadvantaged youths in preparing for technical and professional health careers, as described in § 426.6.

(4) *Agriculture Action Centers.* The Secretary supports model projects providing improved access to vocational education programs through agriculture action centers, as described in § 426.7.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.4 What activities does the Secretary fund under the Demonstration Projects?

The Secretary supports the following types of projects:

(a) Model projects providing improved access to quality vocational education programs for—

(1) Individuals with disabilities;

(2) Educationally and economically disadvantaged individuals (including foster children);

(3) Individuals of limited English proficiency;

(4) Individuals who participate in programs designed to eliminate sex bias;

(5) Individuals in correctional institutions; and

(6) Men and women seeking to enter nontraditional occupations.

(b)(1) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education (including State boards of vocational education and eligible recipients as defined in 34 CFR 400.4).

(2) The projects described in paragraph (b)(1) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(i) Work experience and apprenticeship projects;

(ii) Transitional work site job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(iii) Placement services in occupations that the students are preparing to enter;

(iv) If practical, projects that will benefit the public, such as the

rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(v) Employment-based learning programs.

(3) The projects described in paragraphs (b) (1) and (2) of this section may include institutional and on-the-job training, supportive services authorized by the Act, and other assistance as the Secretary determines to be necessary for the successful completion of the project.

(c) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(Authority: 20 U.S.C. 2420a(a) (1)–(3) and (b)(1))

§ 426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?

The Secretary supports model projects that develop programs and improve instruction and curricula related to—

(a) Managing individual and family resources;

(b) Making consumer choices;

(c) Balancing work and family;

(d) Improving responses to individual and family crises, including family violence and child abuse;

(e) Strengthening parenting skills, especially among teenage parents;

(f) Preventing teenage pregnancy;

(g) Assisting aged individuals with disabilities, and members of at-risk populations, including the homeless;

(h) Conserving limited resources;

(i) Improving individual, child, and family nutrition and wellness;

(j) Understanding the impact of new technology on life and work;

(k) Applying consumer and homemaking education skills to jobs and careers;

(l) Other needs to be determined by the State board of vocational education; and

(m) Developing child growth and development centers.

(Authority: 20 U.S.C. 2420a(4))

§ 426.6 What activities does the Secretary fund under the Community-Based Organization Projects?

(a) The Secretary supports projects that assist disadvantaged youths in preparing for technical and professional health careers.

(b) The Secretary may require partnerships described in § 426.2(b)(1) to provide in-kind contributions from participating schools, institutions, and businesses and to involve health professionals serving as instructors and counselors.

(Authority: 20 U.S.C. 2420a(5))

§ 426.7 What activities does the Secretary fund under the Agriculture Action Centers?

The Secretary supports model Agriculture Action Centers that provide improved access to vocational education programs and that—

(a) Assist individuals—

(1) Who are adversely affected by farm and rural economic downturns;

(2) Who are dislocated from farming; and

(3) Who are dislocated from agriculturally related businesses and industries that are adversely affected by farm and rural economic downturns;

(b) Provide services, including—

(1) Crisis management counseling and outreach counseling that would include members of the family of the affected individual;

(2) Evaluation of vocational skills and counseling on enhancement of these skills;

(3) Assistance in obtaining training in basic, remedial, and literacy skills;

(4) Assistance in seeking employment and training in employment-seeking skills; and

(5) Assistance in obtaining training related to operating a business or enterprise;

(c) Provide for formal and on-the-job training to the extent practicable; and

(d) Are coordinated with activities and discretionary programs under Title III of the Job Training Partnership Act (29 U.S.C. 1651 *et seq.*).

(Authority: 20 U.S.C. 2420a(6))

§ 426.8 What regulations apply?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420a)

§ 426.9 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420a)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 426.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 426.21, 426.22, 426.23, or § 426.24.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §§ 426.21, 426.22, 426.23, or § 426.24.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in §§ 426.21, 426.22 426.23, or § 426.24.

(Authority: 20 U.S.C. 2420a)

§ 426.21 What selection criteria does the Secretary use for the Demonstration Projects?

The Secretary uses the following criteria to evaluate an application for a demonstration project:

(a) *Program factors.* (10 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the project will provide—

(1) Vocational education to meet current and projected occupational needs; and

(2) For adequate and appropriate involvement and cooperation of the public and private sectors in the project, including—

(i) A clear identification of the public and private sector entities involved in the project;

(ii) A description of public and private sector involvement in the planning of the project; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational

problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Disseminating the results of the project in a manner that would meet the requirement in § 426.31;

(3) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(4) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(5) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(6) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project. For the Community-Based Organization Projects, the Secretary determines the qualifications, in relation to project requirements, of health professionals serving as preceptors and counselors and of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project. For the Program for Model Consumer and Homemaking Education Projects, the Secretary also considers the experience and training of key personnel in consumer and homemaking education; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities. For the Community-Based Organization Projects, the Secretary also determines the extent to which the budget includes in-kind contributions from partnership members.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?

(a) The Secretary uses the following criteria to evaluate an application for a model consumer and homemaking education project:

(1) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which project activities will improve, expand, and update programs that will—

(i) Be conducted for residents of economically depressed areas or areas with high rates of unemployment;

(ii) Encourage participation of traditionally underserved populations;

(iii) Encourage the elimination of sex bias and sex stereotyping; and

(iv) Address priorities and emerging concerns at the local, State, and national levels, such as the articulation of secondary and postsecondary consumer and homemaking education programs and the integration of basic skills in consumer and homemaking education programs.

(2) *Demonstration program design.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(i) Bases the proposed consumer and homemaking education project on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(A) Student performance and achievement;

(B) Placement of students in jobs, including the preparation of students for the occupation of homemaking; and

(C) Successful transfer of students to a wide variety of postsecondary educational programs;

(ii) Proposes project objectives that contribute to the improvement of consumer and homemaking education; and

(iii) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(b) The Secretary also uses the criteria and points in § 426.21 (c) through (h) to evaluate an application.

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(Authority: 20 U.S.C. 2420a)

§ 426.23 What selection criteria does the Secretary use for the Community-Based Organization Projects?

The Secretary uses the following criteria to evaluate an application for a community-based organization project:

(a) *Program factors.* (10 points) The Secretary reviews the quality of a proposed community-based organization project to assess the extent to which the proposed project—

(1) Will assist disadvantaged youths in preparing for technical and professional health careers;

(2) Provides for adequate and appropriate involvement of local schools, institutions of higher education, and businesses in the project, including—

(i) Clear identification of partnership members;

(ii) Involvement of partnership members in the planning of the project;

(iii) Involvement of partnership members in the operation of the project; and

(3) Will coordinate activities to ensure that the project will help meet current and projected occupational needs in the area.

(b) *Other criteria.* The Secretary also uses the criteria and points in § 426.21 (b) through (h) to evaluate an application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.24 What selection criteria does the Secretary use for Agriculture Action Centers?

The Secretary uses the following criteria to evaluate an application for an Agriculture Action Center:

(a) *Program factors.* (10 points) The Secretary reviews each application for an Agriculture Action Center to determine the extent to which the proposed center will—

(1) Provide vocational education to meet current and projected occupational needs; and

(2) Be located in a service area that includes a high concentration of individuals who are—

(i) Adversely affected by farm and rural economic downturns;

(ii) Dislocated from farming; and

(iii) Dislocated from agriculturally-related businesses and industries that are adversely affected by farm and rural economic downturns.

(b) *Other criteria.* The Secretary also uses the criteria and points in § 426.21 (b) through (h) to evaluate an application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.25 What additional factors may the Secretary consider?

After evaluating applications according to criteria in §§ 426.21, 426.22, 426.23, or § 426.24, the Secretary may fund other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this part.

(Authority: 20 U.S.C. 2420a)

Subpart D—What Conditions Must Be Met After an Award?

§ 426.30 What is the requirement regarding cost-sharing?

(a) A recipient of an award under this part shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with Subpart G of 34 CFR part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

§ 426.31 What is the requirement regarding dissemination?

Recipients must disseminate the results of projects assisted under this part in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

§ 426.32 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.33 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2420a)

29. Part 427 is added to read as follows:

PART 427—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.
427.1 What is the Bilingual Vocational Training Program?
427.2 Who is eligible for an award?
427.3 What activities may the Secretary fund?
427.4 What regulations apply?
427.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

427.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

427.20 How does the Secretary evaluate an application?
427.21 What selection criteria does the Secretary use?
427.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

427.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2441(a), unless otherwise noted.

Subpart A—General

§ 427.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school youth and adults, to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Authority: 20 U.S.C. 2441(a))

§ 427.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve or currently serving individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(a))

§ 427.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts for—

(1) Bilingual vocational training projects for limited English proficient out-of-school youth and adults who are available for training and employment;

(2) Bilingual vocational education and training projects for limited English proficient out-of-school youth and adults who have already entered the labor market but who desire or need English language skills and job skills training or retraining to achieve employment in a recognized occupation or new and emerging occupations, adjust to changing work force needs, expand their range of skills, or advance in employment; and

(3) Training stipends for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 2441(a), (e)(2))

§ 427.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this PART 427.

(Authority: 20 U.S.C. 2441(a))

§ 427.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(a))

Subpart B—How Does One Apply for an Award?

§ 427.10 What must an application contain?

(a) An application must—

(1) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Training Program;

(3) Contain measurable goals for the enrollment, completion, and placement of program participants;

(4) Include a comparison of how the applicant's goals take into consideration any related standards and measures in the geographic area for the Job Opportunities and Basic Skills Training (JOBS) program (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) programs (29 U.S.C. 1501 *et seq.*) and any standards set by the State Board for Vocational Education for the occupational and geographic area;

(5) Describe, for each occupation for which training is to be provided, how successful program completion will be determined and reported to the Secretary in terms of the academic and vocational competencies to be demonstrated by enrollees prior to successful completion and any academic or work credentials expected to be acquired upon completion; and

(6) Be submitted to the State board for vocational education (State board) established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(6) of this section with the application.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(a), (d)(1) and (2))

Subpart C—How Does the Secretary Make an Award?

§ 427.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 427.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 427.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 427.21.

(Authority: 20 U.S.C. 2441(a))

§ 427.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Need.* (15 points) The Secretary reviews each application for specific information that shows the need for the proposed bilingual vocational training project in the local geographic area, including—

(1) The employment training need of limited English proficient individuals to be met;

(2) The labor market need to be met; and

(3) The relationship of the proposed project to other employment training programs in the community.

(b) *Plan of operation.* (15 points) (1) The Secretary reviews each application to determine the extent to which the project proposes measurable goals for student enrollment, completion, and placement and describes how the applicant sets the goals taking into consideration the standards and measures for JOBS programs and JTPA programs and any standards set by the State Board established under section 111 of the Act for the occupation and geographic area.

(2) The Secretary reviews each application to determine the extent to which the project defines successful program completion (or describes how successful program completion will be defined and reported to the Secretary) in a way consistent with the goals of the program for each occupation for which training is to be provided.

(3)(i) The Secretary reviews each application for specific information that, upon completion of their training, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be enrolled for further training related to their training under this program. This information must correspond to the information described in paragraph (a) of this section.

(ii) The estimated job placement rate must be supported by past records, actual employer job commitments, anticipated job openings, or other pertinent information.

(4) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(i) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Training Program;

(ii) For each objective, the specific tasks to be performed in order to achieve the specified project objective;

(iii) How the applicant plans to use its resources and personnel to achieve each objective; and

(iv) If the applicant plans to use a project advisory committee, a clear plan for using a project advisory committee to assist in project development, to review curriculum materials, and to make recommendations about job placements.

(c) *Program factors.* (20 points) (1) The Secretary reviews each application to determine the quality of training to be provided, including—

(i) Provision of vocational skills instruction in English and the trainees' native languages;

(ii) Provision of job-related English-as-a-second language instruction;

(iii) Coordination of the job-related English-as-a-second language instruction with the vocational skills instruction;

(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school youth and adults who have the greatest need for bilingual vocational training;

(v) Assessment procedures that evaluate the language and vocational training needs of the trainees;

(vi) Provision of counseling activities and employability skills instruction that prepare trainees for employment in an English language environment; and

(vii) Job development and job placement procedures that provide opportunities for career advancement or entrepreneurship.

(2) The Secretary reviews each application to determine the project's potential to have a lasting impact in the local geographic area, including the potential impact of the project on—

(i) Program participants;

(ii) The agency or agencies responsible for administering the bilingual vocational training program;

(iii) Other employment training services in the local area; and

(iv) The community.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities, equipment, and supplies that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the project;

(2) Identifies at a minimum, types of data to be collected and reported with respect to the English-language competencies and academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the training;

(3) Identifies at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex, racial or ethnic group, socio-economic status, and if appropriate, by level of English proficiency, for each occupation for which training is provided;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results; and

(5) Makes use of an external evaluator.

(g) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for making available the methods and techniques used by the project to others interested in replicating these methods and techniques, such as

by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(a))

§ 427.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 427.21 and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within a State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Subpart D—What Conditions Must be Met After an Award?

§ 427.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an independent evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include descriptions and analyses of the accuracy of records and validity of measures by the project to establish and report on the English-language competencies and academic and vocational competencies demonstrated and the academic and work credentials acquired.

(d) The annual evaluation must contain descriptions and analyses of the accuracy of records and validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex, racial or ethnic group, socio-economic status, and, if appropriate, by level of English proficiency for each occupation for which training has been provided.

(e) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services; and

(ii) Improved English-language, academic, and vocational skills competencies.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(a))

30. Part 428 is added to read as follows:

PART 428—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.

428.1 What is the Bilingual Vocational Instructor Training Program?
428.2 Who is eligible for an award?
428.3 What activities may the Secretary fund?
428.4 What regulations apply?
428.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

428.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

428.20 How does the Secretary evaluate an application?
428.21 What selection criteria does the Secretary use?
428.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 2441(b), unless otherwise noted.

Subpart A—General

§ 428.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient individuals.

(Authority: 20 U.S.C. 2441(b))

§ 428.2 Who is eligible for an award?

(a) The following entities are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(b)(1))

§ 428.3 What activities may the Secretary fund?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating in or preparing to participate in bilingual vocational training programs; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project.

(Authority: 20 U.S.C. 2441(b))

§ 428.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 428.

(Authority: 20 U.S.C. 2441(b))

§ 428.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(b))

Subpart B—How Does one Apply for an Award?

§ 428.10 What must an application contain?

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to make the determination required by § 428.3(b); and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient individuals.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority : 20 U.S.C. 2441(d)(1), (4))

Subpart C—How Does the Secretary make an Award?

§ 428.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 428.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) or this section, based on the criteria in § 428.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 428.21.

(Authority: 20 U.S.C. 2441(b), (d)(5))

§ 428.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points) (1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area or areas to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area or areas to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient individuals.

(b) *Program design.* (20 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area or areas to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient individuals enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient individuals for employment; and

(2) Potential to increase access to vocational education for limited English proficient individuals.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project;

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after-training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured; and

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(b))

§ 428.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 428.21, and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Note: Appendix A and appendix B will not be codified in the Code of Federal Regulations.

APPENDIX A—Analysis of Comments and Changes

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Definitions—Criminal offender (§ 400.4(b))

Comments: One commenter recommended that the phrase "who is charged with" be removed from the definition of "criminal offender."

Discussion: The Secretary agrees that a person who is charged with a criminal offense is not a criminal offender as that term is commonly used. However, the Secretary believes Congress included these persons under the definition of "criminal offender" so that individuals incarcerated prior to trial could receive services under the Act.

Changes: None.

Definitions—Coherent sequence of courses (§ 400.4(b))

Comments: Some commenters suggested that the regulations should not permit a single adult course to qualify as a sequence of courses. The commenters argued that the definition of "coherent sequence of courses" is incorrect and clearly misinterprets the statute. The commenters recommended that both a coherent series of courses and a sequential course of study—but not a single course—be interpreted as a "series of courses." A number of other commenters supported the position that a single course incorporating a sequence or aggregation of competencies should be eligible for funding. These commenters urged that, for the sake of clarity, the definition of "coherent sequence of courses" be revised to include a single course, rather than providing this information in the preamble.

Discussion: In defining the term "coherent sequence of courses," the Secretary was guided by the statutory definition of "vocational education," which includes competency-based applied learning. Frequently, vocational offerings designed to prepare students for employment are not structured on the basis of a sequence of courses but rather on the aggregation of competencies necessary to perform a job. In the case of adult training and retraining programs, these competencies are invariably structured as sequential units within a single course. Although the statutory definition of "vocational education" is ambiguous, the Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act—including competency-based adult training and retraining courses. The definition of "coherent sequence of courses" in § 400.4(b) incorporates a single adult training or retraining course structure if that course leads to an aggregation of competencies necessary for employment.

Changes: The definition of "coherent sequence of courses" in § 400.4(b) has been revised to include sequential units encompassed within a single adult training or retraining course that otherwise meets the requirements of this definition.

Comments: One commenter requested that the definition of "coherent sequence of courses" be changed to include "basic and advanced academic competencies" and "specific and general occupational competencies." The commenter pointed out that Congress intended that programs focus on the broad range of both basic and advanced academic skills and on both general and specific occupational skills.

Discussion: The Secretary agrees that Congress intended that programs funded under the Act focus on the broad range of both basic and advanced academic skills and on both general and specific occupational skills. The Secretary believes that the definition of "coherent sequence of courses" contained in § 400.4(b) contemplates a broad interpretation of academic and occupational skills.

Changes: None.

Definitions—Disadvantaged (§ 400.4(b))

Comments: One commenter suggested that the regulations should clarify that an individual with disabilities may also be economically or academically disadvantaged and may need other services to meet the needs related to their disadvantages.

Discussion: The Secretary agrees that an individual with disabilities may also be economically or academically disadvantaged and, as such, may require and should receive additional services. However, the Secretary notes that the definition of "disadvantaged" is consistent with the unambiguous definition of "disadvantaged" in section 521(b) of the Act, that excludes individuals with disabilities in order to avoid duplicate counts of students.

Changes: None.

Comments: One commenter objected to the definition of "disadvantaged" as it applies to an academically disadvantaged individual as being too restrictive. The commenter felt that the "25th percentile" rule should be changed to the "40th percentile" so as to agree with the practice under Chapter 1.

Discussion: The definition of "disadvantaged" is similar to the definition of this term in the regulations that implemented the Carl D. Perkins Vocational Education Act (CDPVEA). This definition was based on the intent of Congress as expressed in Item 246 of the Conference Report accompanying the CDPVEA. (H.R. Rep. 1129, 98th Cong., 2d Sess. 100 (1984).)

Changes: None.

Definitions—Displaced homemaker (§ 400.4(b))

Comments: One commenter suggested waiving or expanding the requirement to be an adult to qualify as a "displaced homemaker." The commenter expressed concern that the definition is discriminatory if only adults qualified as displaced homemakers. Additionally, the commenter suggested that paragraph (3)(i) of the definition clarify that individuals "currently on public assistance" are included under the definition.

Discussion: The definition in section 521(14) of the Act imposes an unambiguous requirement that only an adult may qualify as a displaced homemaker. However, neither the Act nor the regulations define "adult." Therefore, the issue of whether an individual is an adult is controlled by State law.

With respect to whether individuals who are currently on public assistance would be displaced homemakers, section 521(b) of the Act does not include this group of individuals as a separate category within the definition of "displaced homemakers." However, these individuals may be included in other categories within the definition, such as individuals who are unemployed or underemployed in paragraph (3)(iii) of the definition of "displaced homemaker."

Changes: None.

Comments: One commenter expressed concern that the definition of "displaced homemaker" is overly restrictive, specifically with respect to the language regarding parents who may currently receive aid to families with dependent children. The commenter recommended that parents who have worked primarily in the home for a number of years and are currently receiving public assistance be included in the definition.

Discussion: Section 521(14)(B)(ii) of the Act establishes a condition that a parent may be considered a "displaced homemaker" if his or her youngest dependent child becomes ineligible to receive assistance under the program for aid to families with dependent children under part A of title IV of the Social Security Act within two years of the parent's application for assistance under the Perkins Act. However, the Secretary notes that an individual who may not qualify as a displaced homemaker under this provision may well qualify as a displaced homemaker under other provisions of the definition such as those related to employment status or past dependence on public assistance or the income of a relative. Additionally, this individual may be within the definition of a "single parent," and, thus, may qualify for the same services as a displaced homemaker under §§ 403.80–403.82.

Changes: None.

Definitions—Economically disadvantaged family or individual (§ 400.4(b))

Comments: A commenter noted that § 400.4(b) defines "economically disadvantaged family or individual" to include a family or an individual eligible for the free or reduced-price meals programs under the National School Lunch Act. Further, the commenter noted that the National School Lunch Act prohibits the identification of students by name, and, because of the many restrictions under the Privacy Act, it is extremely difficult for an LEA to identify and verify the number of economically disadvantaged individuals enrolled in its vocational education program. The commenter recommended that the Department further clarify how to identify and verify data on economically disadvantaged enrollment in a vocational education program without legal access to this information.

Discussion: The note to paragraph (1)(iv) of the definition of "economically disadvantaged family or individual" explains that the National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in the free or reduced-priced meals program to determine eligibility of sites or program areas for projects, services, and activities under the Act.

Changes: None.

Comments: Several commenters noted that the definition of "economically disadvantaged family or individual" does not include two criteria—receipt of a Pell grant or aid under a comparable State program of need-based financial assistance and eligibility for participation in programs assisted under Title II of JTPA—that were included under the regulations implementing the CDPVEA. The commenters recommended that these two criteria be retained in order to allow continued services under section 231 of the Act to the individuals who were served under the predecessor statute.

Discussion: Rather than presenting an exhaustive list of possible indicators of a person's status as economically disadvantaged, the Secretary believes it is more appropriate to list some indicators of economic status while providing grantees the flexibility to identify others, which is specifically provided for in paragraph (4) of the definition of "economically disadvantaged family or individual." However, the Secretary agrees that receipt of a Pell grant or comparable State assistance and eligibility under title II of JTPA are indices that would be representative of a number of economically disadvantaged students attending vocational education programs. Therefore, the definition in § 400.4(b) is modified to include these indices so that a case-by-case determination under paragraph (4) of the definition is not required prior to using them.

Changes: The definition of "economically disadvantaged family or individual" in § 400.4(b) has been modified to include an individual who receives a Pell grant or assistance under a comparable State program of need-based financial assistance, or who is eligible to participate in programs assisted under Title II of the JTPA. A conforming change is made to § 403.114(a).

Comments: One commenter suggested that the definition of "economically disadvantaged family or individual" should incorporate the description utilized in § 403.114.

Discussion: The definition of "economically disadvantaged family or individual" incorporates the same criteria used to identify numbers of economically disadvantaged students attending vocational education programs in § 403.114(a).

Changes: None.

Comments: One commenter recommended that the definition of "economically disadvantaged family or individual" be modified by adding "or the Office of Management and Budget" following "from the Department of Commerce." The commenter pointed out that, since JTPA program eligibility is based on data available from the Office of Management and Budget (OMB), the same data source should be available to the Secretary for defining this term in the Perkins Act.

Discussion: The data to which the commenter refers is known as the OMB Poverty Guidelines but is officially entitled the "HHS Poverty Guidelines" and is published annually in the **Federal Register** by the Department of Health and Human Services. The Secretary agrees that this publication is a direct source of data on poverty thresholds and should be reflected in the regulations so that a case-by-case determination under paragraph (4) of the definition of economically disadvantaged family or individual is not required prior to using these data.

Changes: The phrase "or the Health and Human Services Poverty Guidelines" has been added to paragraph (3) of the definition of "economically disadvantaged family or individual" following the reference to the Department of Commerce. A conforming amendment has been made to § 403.114(a) and to the definition of "acute economic need" in § 401.5(b).

Definitions—Individual with disabilities (§ 400.4(b))

Comments: One commenter asked that the definition of "individual with disabilities" be clarified. Specifically, the commenter asked what constitutes a "major life activity." Also, the commenter asked if self-identification of a disability is acceptable or if there must be an official determination by a Federal or State agency.

Discussion: The definition of "individual with disabilities" in § 400.4(b) is based on the definition of "disability" in section 3(2) of the Americans With Disabilities Act of 1990 (ADA) and includes an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of that individual, has a record of this type of impairment, or is regarded as having this type of impairment. The Secretary believes the definition of "individual with disabilities" in § 400.4(b) should be modified in order to clarify the relationship between this definition and other definitions used under part B of the IDEA and under section 504 of the Rehabilitation Act of 1973.

A "major life activity" is defined in the legislative history of the ADA to mean functions such as "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and participating in community activities." (H.R. Rep. 485(II), 101st Cong., 2d Sess. 52 (1990).) This is consistent with the definition of "major life activity" in 34 CFR 104.3(j)(2)(ii), which implements section 504 of the Rehabilitation Act of 1973, as it applies to each recipient of Federal financial assistance from the Department of Education.

A student may identify himself or herself as having a disability, but the evaluation and determination of this condition is carried out by the eligible recipient. Under the Perkins Act, an eligible recipient must identify the number of students with disabilities enrolled in vocational programs operated by the eligible recipient. Under section 111(c) of the Act, any State participating in programs authorized by the Act must designate or assign the head of the State office responsible for administering Part B of IDEA to review the implementation of the provisions of the Act as they relate to students with disabilities to ensure that eligible recipients have identified the number of students with disabilities enrolled in the eligible recipients' vocational programs. Additionally, any LEA also receiving funds under Part B of the IDEA is obligated, as a condition of receiving those funds, to locate, identify, and evaluate any student who is suspected of having a disability.

Changes: The Secretary has modified the definition of "individual with disabilities" in § 400.4(b) to clarify that this definition is based on the definition of "disability" as that term is defined in the ADA. The Secretary also has added a note to clarify that this definition necessarily includes any individual who has been evaluated under Part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services, and any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

Definitions—Terms regarding individuals with disabilities (§ 400.4(b))

Comments: One commenter suggested that terms relating to individuals with disabilities be added to the definitions section of the regulations. These include "disabled," "children with disabilities," and "transition for children with disabilities."

Discussion: It is Department practice to include in regulations definitions of terms only if necessary to implement the statute. Clearly, "children with disabilities" and "disabled" are included within the definition of an "individual with disabilities." The term "transition for children with disabilities" is not used in the regulations.

Changes: None.

Definitions—Individualized education program (§ 400.4(b))

Comments: One commenter suggested that the term "individualized education program" (IEP) be defined directly in the regulations rather than referring to the sections of the IDEA that contain the definition. Another commenter suggested that the definition of the term "individualized education program" be expanded.

Discussion: IEP is defined by reference because it is necessary for recipients to be made aware of the particular document to which the Secretary refers, rather than to receive guidance on how to develop an IEP as is provided in the definition of IEP in section 602(20) of the IDEA.

Changes: None.

Definitions—Local educational agency (§ 400.4(b))

Comments: One commenter suggested that the definition of "local educational agency" (LEA) should exclude local agencies that are created specifically to administer the Job Training Partnership Act (JTPA).

Discussion: Determination of whether agencies created specifically to administer the JTPA, that is, the so-called "private industry councils" (PICs), are included in the definition of LEA would have to be made on a case-by-case basis. However, the Secretary does not believe that a PIC generally would satisfy all the conditions of that definition. It may be possible for a PIC to fall within the final part of the definition of LEA, which includes "any other public educational institution or agency having administrative control and direction of a vocational education program." "Public" is defined in 34 CFR 77.1 to mean that an agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government. Clearly, the definition of LEA does not include a PIC that is incorporated as a private nonprofit organization, as permitted by section 103(e)(1) of the JTPA, or a PIC that does not administer directly any vocational education program, as would be permissible under 102(b)(1)(B) of the JTPA. However, a PIC that is a private nonprofit organization and that does provide job training services may qualify for funding under the Act as a "community-based organization."

Changes: None.

Comments: Some commenters questioned whether the definition of "local educational agency" includes tribally controlled school districts.

Discussion: The commenters did not provide sufficient information about what they meant by the term "tribally controlled school district" for the Secretary to determine whether the entity described is within the definition of an LEA. In any case, a State determines in the first instance whether a particular entity is an LEA based on the definition of LEA in § 400.4(b) and related definitions in 34 CFR 77.1.

Changes: None.

Definitions—Single parent (§ 400.4(b))

Comments: A commenter expressed concerns that the definition of "single parent" may be confusing to those who are neither unmarried nor legally separated, but who are separated from a spouse prior to divorce. The commenter argued that a legal separation is not a common practice, but that married couples often separate prior to legalizing the separation through a divorce or other means. The commenter recommended that the term "legally" be deleted from the definition of "single parent" to make the definition more responsive to the needs of a single parent who may be in the process of obtaining a legal separation of some type.

Discussion: The definition repeats section 521(30)(A) of the Act which requires, in part, that a person to be unmarried or legally separated from a spouse in order to qualify as a single parent. However, the question of whether an individual is "legally separated" is an issue outside the scope of the Act and, generally, must be decided as a matter of State law.

Changes: None.

Definitions—Special populations (§ 400.4(b))

Comments: One commenter recommended that the definition of "special populations" be clarified to include displaced homemakers, single parents, and single pregnant women.

Discussion: The Secretary does not believe it is appropriate to expand the unambiguous statutory definition of "special populations" to include these individuals. However, the Secretary notes that many of these individuals might well be participating in programs designed to eliminate sex bias and, thus, would be members of a special populations on this basis.

Changes: None.

Definitions—Vocational education (§ 400.4(b))

Comments: One commenter objected to the phrase "or a sequence or

aggregation of occupational competencies" as it appears in the definition of "vocational education" in § 400.4(b). The commenter argued that this language could be interpreted to authorize a single course of even the shortest length and most superficial content.

Discussion: In defining "vocational education," the Secretary was guided by the statutory definition of "vocational education," which specifically includes competency-based applied learning. Although the statutory definition of "vocational education" is ambiguous, the Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act. Frequently, vocational offerings designed to prepare students for employment are structured not on the basis of a sequence of courses, but rather on the aggregation of competencies necessary to perform a job. This is particularly true in the case of adult training and retraining programs. However, the Secretary does not agree that a single course having a short length and superficial content would be within the definition of "vocational education." This definition imposes numerous requirements concerning the content of a vocational education program that a short, superficial course would not satisfy.

Changes: None.

Comments: One commenter recommended clarifying that the term "applied technology education" as it appears in the definition of "vocational education" is not synonymous with the term "technology education" as defined in § 400.4(b).

Discussion: The Secretary agrees that the term "applied technology education" as used in the definition of "vocational education" is not interchangeable with the term "technology education" as defined in section 521(39) of the Act. Item 285 of the Conference Report accompanying the Act indicates that the House bill revised the definition of "vocational education" and relabeled it as "applied technology education." (H.R. Rep. No. 660, 101st Cong., 2d Sess. 155 (1990).) The conferees agreed to the revised definition but retained the term "vocational education" and indicated that the term includes "applied technology education," the term used in the House bill.

The legislative history of the Act is clear that the House bill used "applied technology education" in a manner distinct from the use of the term "technology education." The report of the Committee on Education and Labor indicates that the Committee was aware that there is a movement to rename industrial arts programs as technology education programs. (H.R. Rep. 41, 101st Cong., 1st Sess. 6 (1989).) The Committee specifically indicated that it did not wish its proposed amendments to be confused with the name change of industrial arts programs and that the amendments using the term "applied technology education" would apply only to programs leading to academic and job competencies.

Changes: None.

State committee of practitioners (§ 400.6)

Comments: Several commenters expressed a concern that the membership of the Committee of Practitioners (Committee), as required by section 512(a) of the Act and implemented in § 400.6, does not include representatives from higher education. A number of other commenters indicated that the Committee is composed of too many representatives of secondary education which will have an adverse effect on the development of performance standards and measures relating to postsecondary education. These commenters recommended that the Committee be expanded to include more postsecondary education representatives. Still another commenter expressed concern that the Committee did not have a representative of individuals with disabilities.

Discussion: Section 512(a) of the Act establishes the membership requirements of the State Committee of Practitioners, which does not specifically include a representative of individuals with disabilities, but which, contrary to one comment, does include representatives of institutions of higher education. Section 512(a) of the Act on its face requires that representatives of LEAs constitute a majority of the Committee membership. The Secretary does not believe it is appropriate to modify these unambiguous membership requirements by regulation.

Changes: None.

State rules or regulations (§ 400.7(b)(3))

Comments: One commenter suggested that sections 512 and 513 of the Act are redundant. Section 512 of the Act, which is implemented in § 400.7, requires any proposed or final State rule or regulation to be reviewed by the Committee of Practitioners. Section 513 of the Act, which is implemented in § 400.9(c), requires a State to identify State imposed requirements. The commenter recommended that § 400.7(b)(3) be deleted from the final regulations, thereby reducing the redundancy of sections 512 and 513 of the Act.

Discussion: The purpose of § 400.7(b)(3) is not to establish an additional requirement that might cause a redundancy with the requirement of section 513 of the Act to identify State-imposed requirements. Section 400.7(b)(3) clarifies that any State policy that is binding on recipients is subject to the review of the State Committee of Practitioners. Section 513 of the Act requires that any State-imposed rule or policy be so identified, which is a separate and distinct requirement.

Changes: None.

Reporting requirements (§ 400.10 and Appendix B)

Comments: Although several commenters supported accountability in education programs, the commenters did not agree that the regulations should expand on the law and require more paperwork for many of the programs, e.g., Indian Vocational Education Program, Native Hawaiian Vocational Education Program, National Tech Prep Education Program, etc.

Many commenters thought that the monthly and quarterly reporting requirements in § 400.10(b) would apply to State-administered programs and therefore would affect local agencies participating under the Act. These commenters were concerned that keeping records and gathering data would divert funds or attention away from such aspects as improving the educational process, program implementation, achieving results, and meeting the needs of program participants.

Five commenters suggested that the Department should consider a more simplified, less burdensome approach to accountability. Two commenters thought that monthly and quarterly performance and financial reports in addition to annual reports would be excessive and that annual reports should suffice for accountability purposes. Two commenters noted that the Act includes no such reporting requirements. One commenter noted that the reporting requirements proposed for the National Tech-Prep Education Program are unrealistic and their frequency and timelines are inconsistent with at least one State's accounting and reporting requirements.

Discussion: Due to its silence on the issue of reporting under the State-administered formula grant programs, the summary of Major Provisions, paragraph (1)(e), Reporting Requirements, in the preamble to the proposed regulations, may have created a misimpression when it stated that, "To implement this strategy, § 400.10 establishes a general reporting requirement that must be met by recipients of funds under the Vocational

and Applied Technology Education Programs. Appendix B contains the specific information that the Secretary intends to require any grantee to submit in order to comply with the reporting requirements in § 400.10." Because neither the Summary of Major Provisions nor § 400.10 differentiated clearly between reporting requirements for federally administered discretionary programs and State-administered programs, it is possible that at least some of the commenters believed that all recipients of funds under the Act would have to meet the reporting requirements outlined in § 400.10(b).

Under § 400.10(b), the Department proposed that most discretionary grant recipients be required to provide both quarterly and annual progress reports. The § 400.10(b)(2) requirement for monthly progress reports applies only to the National Network for Curriculum Coordination in Vocational and Technical Education Program. The § 400.10(b)(3) requirement for a monthly exception report applies only to the National Center or Centers for Research in Vocational Education Program. Specific expectations for reporting activities and accomplishments under the State-administered formula grant programs were not explicated in the proposed regulations. The Secretary expects to require only annual performance reports from the States on State-administered formula grant programs, including the State-Administered Tech-Prep Education Program.

The Secretary agrees with the commenters that changing the reporting requirement for the discretionary programs listed in § 400.10(b)(1) from one for quarterly performance reports to one for only annual performance reports would have the advantage of reducing the paperwork burden on grantees. However, the Secretary would also consider such a change as having distinct disadvantages. First, requiring performance reports for discretionary programs to be submitted only on an annual basis would deprive the Department of timely information needed to identify those projects that may be experiencing difficulty in accomplishing certain program objectives. In many cases, grantees may need early technical assistance from the Department in order to improve their projects. In the past, delay in providing the Department with information about project performance has resulted in certain grantees' failure to complete their projects successfully, whereas, had the grantees received timely technical assistance from the Department, the projects might have been successful. Second, since a grantee would have a full 90 days after the end of a project period within which to file its annual performance report, by the time the report was received by the Department there would be insufficient time for the Department to consider the information provided in determining whether to fund a subsequent year's award. For grants ranging in length from 12 to 36 months, annual reports, while generally containing adequate summaries of project information for accountability purposes, have supplied the Department with information that has been both untimely and inadequate for the purposes of planning and project assistance. Thus, while the Secretary recognizes that reducing the reporting requirement from a quarterly reporting requirement to an annual reporting requirement would reduce paperwork burden for grantees, the Secretary believes that, for many of the discretionary programs funded under the Act, requiring grantees to report to the Department more frequently than once a year is essential to the Secretary's ability to provide adequate stewardship over the Federal funds awarded. Accordingly, in response to the commenters, the Secretary has amended § 400.10(b)(1) to require the submission of performance reports to the Department at least on a semi-annual basis rather than on a quarterly basis. In the event that the Secretary determines that additional reports are necessary in order to ensure program integrity and accountability, the Secretary will so notify grantees. If the information in question is available from other sources, such as continuation applications or ongoing Federal evaluation activities, the Secretary will not require recipients of grants or cooperative agreements under any of the parts listed in § 400.10(b)(1) to submit performance reports more frequently than on a semi-annual basis. Moreover, in the event that the Secretary determines that additional reports are necessary under one or more of those programs, under the Paperwork Reduction Act, requiring such additional reports would constitute an information collection request that would be published in the **Federal Register** and subject to public comment and approval by the Office of Management and Budget, thus ensuring that the burden with which the commenters were concerned would be kept to a minimum.

Changes: Section 400.10(b)(1) has been revised to require that recipients of grants and cooperative agreements under parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 must submit project performance reports to the Department at least semi-annually, rather than quarterly. A new paragraph (c) has been added to § 400.10 to clarify that recipients of State-administered vocational and technology education grants under parts 403, 406, and 407 are required to submit annual performance and financial reports to the Department.

Comments: One commenter noted that since the school year is approximately nine months long and encompasses part of two calendar years, annual reporting does not result in the desired effect of clearly reflecting a program's success. The commenter believes, however, that "annual" reporting for student achievement, completion, and placement rates would result in a truer picture than quarterly reporting. This commenter believes that emphasis should be placed on implementing programs rather than on paper compliance.

Discussion: The Secretary calculates "annual" reporting from the effective date of a grant to 12 months later. The term "annual reporting" in the regulation, thus, relates not to a calendar year but to 12 months of program or project operation. The primary purpose of the semi-annual reporting required in § 400.10(b)(1) is that of enabling the Secretary to track the progress of an applicant in meeting operational objectives laid out in the original proposal. The Secretary agrees with the commenter's observation that project or program success by way of outcomes can best be tracked through annual reports. However, as the Secretary has already stated in response to comments relative to the NPRM's quarterly reports requirement for discretionary grants, annual reports are an insufficient basis upon which to plan monitoring and technical assistance, particularly since many program or projects last only 12 to 18 months. The Secretary remains convinced that having recipients under certain projects report progress more frequently than annually is essential to responsible grant and contract management and that the requirement for at least semi-annual reporting does, in fact, place emphasis upon the effective implementation of programs, as was suggested by the commenter.

Change: None.

Part 401—Indian Vocational Education Program

Definitions—Bureau-funded school (§ 401.5(b))

Comments: One commenter noted that Bureau of Indian Affairs-funded (BIA-

funded) grant schools were inadvertently left out of the definition of "Bureau-funded schools." This commenter suggested that the Department add, at the end of the definition, the phrase, "or by Title V, Part B—Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501, *et seq.*)."

Discussion: BIA-funded grant schools are included in the definition of Bureau-funded schools through the use of the phrase, "A school for which assistance is provided under the Tribally Controlled Schools Act of 1988."

Changes: None.

Submission of applications (§ 401.10(a))

Comments: One commenter noted that the term "tribal organization" as defined in § 401.5(b) would include BIA-funded contract and grant schools and tribal colleges. The commenter therefore suggested that the phrase, "other than a Bureau-funded school as defined in § 401.5," be added to the regulation to clarify that the requirement for the submission of applications under § 401.10(a) does not apply to Bureau-funded schools.

Discussion: The Secretary agrees that § 401.10(c) was intended to provide Bureau-funded schools flexibility to submit their applications directly to the Secretary or through an Indian Tribe, whichever best suits the proposed project. Section 401.10(a) is intended to apply to other tribal organizations that must submit their applications through an Indian tribe.

Changes: Section 401.10(a) has been changed to clarify that Bureau-funded schools are not subject to the application provisions in that section.

Selection criteria (§ 401.21)

Comments: One commenter noted that the Secretary's heavy emphasis in § 401.21 on job placement may communicate a program bias against continuing work-related education and training in postsecondary institutions. This commenter asked that the selection criteria make explicit reference to the fact that "job placement" does not require immediate job placement after completion of a vocational education course to the detriment of high school students who wish to pursue additional education.

Discussion: Although job placement is an important factor in this program, the Secretary agrees that it is also appropriate for a project to place participants in additional training opportunities that are related to a participant's training under the project. The additional training opportunities could very well include enrollment in postsecondary education or military specialties.

Changes: Section 401.21(a)(1) and (g) have been revised to clarify that placement in training programs or the military are appropriate activities.

Part 403—State Vocational and Applied Technology Education Program

Additional responsibilities of the State board (§ 403.12(b)(1))

Comments: One commenter suggested clarifying § 403.12(b)(1), to indicate that a State's technical committees must develop an inventory of skills needed for occupational areas that includes basic and advanced academic skills and specific and general occupational skills. The commenter stated that this is important to ensure that the work of these technical committees is consistent with the central provisions of the Act that set forth the range of skills that will be used for purposes of assessing and evaluating programs. In addition, the commenter believes that the change would reflect congressional intent that committees focus on basic and advanced academic skills and general occupational skills, not just narrow skill training.

Discussion: The Secretary agrees that the types of skills identified by the commenter should be included in an inventory of skills, as appropriate. However, the Secretary believes that § 403.12(b) is sufficiently specific on this matter. A State board may provide additional guidance to its technical committees if it chooses to do so.

Changes: None.

Duties of State personnel responsible for the elimination of sex discrimination and sex stereotyping (§ 403.13(a)(11))

Comments: Several commenters requested an explanation of the requirement in § 403.13(a)(11) that State personnel working full time to assist the State board in administering the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program by "managing the distribution of funds" under those programs. Specifically, the commenters asked whether the so-called "sex equity coordinator" is solely responsible for the determination of recipients selected, the amounts of awards, and the priorities for each program.

Discussion: Section 111(b)(1) of the Act requires any State that wishes to participate in programs under the Act to assign one individual within the appropriate agency as designated or established by the State board to act as the "sex equity coordinator." That agency, consistent with State board policy and the requirements of the Act, defines the organizational responsibilities of the "sex equity coordinator." While the Secretary believes that Congress intended a State board to allow the "sex equity coordinator" to have considerable involvement in decisions regarding the Sex Equity Program and the Single Parents, Displaced Homemakers, and Single Pregnant Women Program, the Secretary does not believe that this was intended to diminish a State board's continuing authority as the sole State agency responsible for the administration or the supervision of the State vocational education programs. The Secretary believes that the Act together with the regulations in Part 403 provide sufficient guidance in this respect and that additional regulations, which might inappropriately limit State flexibility, are not warranted.

Changes: None.

Personnel requirements regarding coordination with services for individuals with disabilities, services under Chapter 1 of Title I of the Elementary and Secondary Act, and programs for individuals of limited English proficiency (§§ 403.14, 403.15, and 403.16)

Comments: One commenter noted apparent inconsistencies in §§ 403.14, 403.15, and 403.16, which require State personnel to coordinate services for individuals with disabilities, economically disadvantaged students, and individuals of limited English proficiency, respectively. While § 403.14 provides for a review of eligible recipients' plans, §§ 403.15 and 403.16 require a review of eligible recipients' applications. In addition, the commenter requests that the review criteria be uniform to the extent possible.

Discussion: Although sections 111(c), (d), and (e) of the Act refer to the review of "plans," the Secretary believes it is clear that Congress was referring to "applications" for funding submitted by eligible recipients. The Secretary agrees that this term should be used uniformly in §§ 403.14, 403.15, and 403.16. With respect to consistency of the criteria for review set forth in these sections, the Secretary finds that variations reflect differences in the applicable language contained in sections 111(c), (d), and (e) of the Act.

Changes: Section 403.14(a) has been changed to clarify that the documents to be reviewed are applications submitted by eligible recipients.

Comments: Several commenters suggested that in addition to the requirement for the head of the State

offices responsible for administering part B of the Individuals with Disabilities Education Act (IDEA), chapter 1 of title I of the Elementary and Secondary Education Act, and programs for students of limited English proficiency (or their designees) to review all or a representative sample of the applications received from eligible recipients, the Secretary should also require that those officials monitor and evaluate the implementation of approved plans.

Discussion: Section 113(b)(3) of the Act requires the State board to monitor its eligible recipients' programs with respect to whether they are meeting the needs of members of special populations. This is reinforced by the requirements of section 118(a)(3)(E) and (4) of the Act related to monitoring. Thus, while a State voluntarily may delegate its monitoring and evaluation responsibilities pursuant to section 111(a) of the Act, the Secretary believes it would be inappropriate to require a State to have the State personnel referred to in §§ 403.14, 403.15, and 403.16 perform monitoring and evaluation functions.

Changes: None.

Comments: Several commenters suggested deleting from § 403.15 the word "economically" so that State personnel must review the identification of, and provision of services to, all disadvantaged students—not just economically disadvantaged students. The commenters argued that, while use of the term "economically" conforms to the language in section 111(d) of the Act, upon which § 403.15 is based, it is not consistent with the overall language of the Act that accords special status to both academically and economically disadvantaged students.

Discussion: The requirement of § 403.15 reflects the unambiguous language of section 111(d) of the Act. The Secretary does not believe that it is appropriate to impose additional requirements to review services to all disadvantaged students rather than just economically disadvantaged students.

Changes: None.

State council—Establishment (§ 403.17)

Comments: Several commenters suggested that § 403.17 be revised to allow State council members to be appointed for 3-year terms on a staggered basis. Some commenters also suggested that State council members should be removed only "with cause." One commenter supported these suggestions by stating that for State councils to be independent, members must be free from intimidation by the appointing authority.

Discussion: As was the case under the predecessor statute, under section 112 of the Act as implemented by § 403.17, a State appointing authority (the Governor, or in a State in which members of the State board of education are elected, the State board of education) currently has the option of appointing State council members for staggered terms so long as the appointing authority maintains a duly certified State council throughout the period covered by the State plan. The Secretary finds no basis in the Act for requiring terms of specific duration, limitations upon the duration of terms, or the appointment of members to staggered terms. Nor does the Secretary consider it necessary to the proper functioning of State councils or to ensuring the independence of State councils to impose these requirements upon State appointing authorities.

With regard to the commenters' suggestion that appointing authorities be permitted to remove State council members only for cause, the Secretary wishes to point out that the Act also does not mandate any specific procedures for the removal or replacement of council members. Under section 112 of the Act, an appointing authority may appoint and remove council members at will so long as the action is consistent with State law and does not impede the fiscal and administrative independence of the State council, and so long as the State council remains in compliance with the membership and certification requirements of section 112 of the Act. Thus, the Secretary has determined that it is not appropriate to develop specific regulations governing the appointment or removal of State council members. Rather, in view of the flexibility provided in the Act, the Secretary considers it preferable to allow a State appointing authority to appoint and remove State council members in a manner to be determined by that appointing authority. In specific response to the commenter's concern regarding what is referred to as the potential intimidation of a State council by an appointing authority under the statutory appointment scheme, notwithstanding the determination that a State should retain the flexibility afforded to it by section 112 of the Act, the Secretary fully expects each State council to be operated free from intimidation by the appointing authority, in keeping with the requirements of section 112(e) and (f) of the Act, as implemented by these final regulations.

Changes: None.

Comments: One commenter objected to the requirement that each State recertify to the Secretary any new members of a State council within 60 days after the position is vacated. The commenter indicated that 60 days is an insufficient period and recommended that 120 days be allowed.

Discussion: The Secretary considers it important to the proper and efficient functioning of a State council to have all council vacancies filled expeditiously. The Secretary believes that 60 days is a reasonable period of time within which to require States to fill and to certify council vacancies.

Changes: None.

State council—Membership (§ 403.18(b)(2)(i)).

Comments: One commenter pointed out a discrepancy between the language in section 112(a)(2) of the Act and § 403.18(b)(2)(i). The commenter noted that while section 112(a)(2) of the Act provides that each State council must consist of "six individuals who are representatives of secondary and postsecondary vocational institutions (equitably distributed among such institutions) * * * of whom one member shall be representative of special education * * *," § 403.18(b)(2)(i) states that each State council must consist of "six individuals, one of whom must be representative of special education, who are representative of secondary and postsecondary vocational institutions (equitably distributed among those institutions)." The commenter did not make clear his objection to the phrasing in § 403.18(b)(2)(i) other than to state his opinion that the language in the Act was clearer.

Discussion: The Secretary wishes to clarify that in this provision the Secretary did not intend to impose a requirement different from the requirement contained in section 112(a)(2) of the Act. Rather, § 403.18(b)(2) was intended to implement and state more clearly the requirement contained in section 112(a)(2) of the Act. The requirement in question is that a State appoint to its council six individuals who are representative of secondary and postsecondary vocational institutions and who are equitably distributed among those institutions.

Changes: None.

State council—Responsibilities (§ 403.19).

Comments: One commenter suggested that § 403.19(a)(1) of the regulations be changed to specify that a State council be required to meet within 90 days following the Secretary's acceptance of its certification instead of "as soon as practical." The reason given for this proposed change is that, in the opinion

of the commenter, imposing this 90-day deadline would prevent the appointing authority from delaying the appointment of council members.

Discussion: The Secretary agrees with the commenter that appointments of members to a State council should be made as expeditiously as possible. However, in section 112(c) of the Act, a State council is specifically provided with the flexibility to schedule its first meeting "as soon as practical after certification has been accepted by the Secretary * * *," leaving it to the discretion of the council to determine the timing of its first meeting, taking into account the variety of considerations that might come into play in scheduling such a meeting. In the view of the Secretary, imposing a specific deadline upon a council for the scheduling of its first meeting following the Secretary's acceptance of certification (such as that of 90 days as was suggested by the commenter) would eliminate the flexibility provided to a State council in section 112(c) of the Act while having a questionable effect upon the appointing authority's timing of appointments to the council. Moreover, the Secretary wishes to point out that section 112 of the Act as well as these regulations already contain requirements that are likely to encourage a State appointing authority to appoint council members expeditiously. First, under section 112(b) of the Act, a State is required to certify to the Secretary the establishment and membership of its State council by the beginning of each State plan period and cannot receive its grant award until council certification has been accepted by the Secretary. Second, § 403.17(b) specifically requires a State to certify the establishment and membership of its council by June 1st prior to the beginning of each State plan period. Third, the Secretary's acceptance of certification cannot occur until all 13 members have been properly appointed to the council. The Secretary is hopeful that these requirements will result in an expeditious State council appointment process and has concluded that it is neither appropriate nor necessary to impose a deadline for a first meeting by a State council, as has been proposed by the commenter.

Changes: None.

Comments: Several commenters were concerned that the State councils were losing independence and requested that § 403.19(c) be rewritten to ensure independence. Specifically, the commenters requested that this provision be expanded so as to prohibit a State council from performing services for other councils or agencies and to affirm that the expenditure of a State council's funds must be determined solely by that State council.

Discussion: While each State must establish a State council that fulfills all the requirements of section 112 of the Act, there is no prohibition in the Act against cooperation and coordination between the State council, job training and employment councils, or other State advisory councils or groups. In fact, this cooperation and coordination is contemplated by section 112 of the Act and the requirements contained therein relative to State Job Training Coordination Councils and State Councils on Vocational Education. Moreover, a State council may participate in or serve as a State council with broader vocational training or employment responsibilities, such as a "Human Resource Investment Council" or other "super council" so long as its activities, functions, and composition meet all the requirements of the Act pertaining to State Councils on Vocational Education. However, it is also clear that in carrying out the coordination functions contemplated in section 112 of the Act, neither the State nor a State entity may restrict a State council so as to prevent the council from carrying out its functions under the Act in an independent fashion. Section 112 of the Act specifically requires each State council to have sufficient administrative and fiscal independence to carry out its statutory responsibilities in that the administrative and fiscal independence of a State council is expressly provided for in sections 112(e) and 112(f)(2) of the Act. Section 112(e) of the Act, as implemented by § 403.19(c)(1), authorizes a State council to obtain the services of personnel or contract for services so that the council may carry out its functions under the Act, including evaluation functions. Section 403.19(c)(2) requires a council to carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. (See discussion of § 403.19(c) in this Appendix.) Section 112(f)(2) of the Act, as implemented by § 403.19(c)(3)(i), provides that the expenditure of funds for a State council "is to be determined solely by the State council for carrying out its functions under [the Act], and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual." It is the view of the Secretary that § 403.19 appropriately conveys both the requirement for coordination as described in this discussion, as well as the requirement for administrative and fiscal independence of the council.

Changes: None.

Comments: One commenter suggested that § 403.19(c)(1) be reorganized to combine paragraphs (c)(1) (i) and (ii). The commenter believed that this change would more accurately reflect the intent of section 112(e) of the Act.

Discussion: The Secretary has reviewed section 112(e) of the Act and agrees with the commenter that a revision of § 403.19(c) is needed. The Secretary has revised this provision to more accurately reflect the requirement in section 112(e) of the Act that a State council must carry out all of its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. In these final regulations, the clause pertaining to the independence of the council now refers to those functions that are performed directly by council personnel as well as to those functions that the council may choose to perform by contracting for services.

Changes: The clause containing the requirement that the council perform its functions independently has been deleted from § 403.19(c)(1)(ii). The Secretary has added a new paragraph (3) to § 403.19(c), which provides that in carrying out any of its functions, whether carried out directly by council personnel or by way of one or more contracts for services, a State council must carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals.

State plans—Development (§ 403.31).

Comments: One commenter requested that § 403.31(b), relating to public hearings, require that organizations and groups that are composed of, or represent, parents, students, and special populations be consulted in developing notices and hearings to ensure that they have genuine opportunities to participate in the process. The commenter stated that reports from various States indicate that these entities are not receiving timely notice, and that, where notice is provided, sufficient information for purposes of providing informed input sometimes is not available.

Several other commenters, however, expressed concern that the requirement in § 403.31(c) to provide public notice of a hearing on a State plan at least 30 days in advance is not expressly contained in the statute and may conflict with State laws.

Discussion: Sections 403.31(b) and (c) implement section 113(a)(2)(B) of the Act, which provides that a State must

hold public hearings on the State plan, after giving "appropriate and sufficient notice" to the public. The Secretary believes that some guidance is required to ensure that adequate time is provided for the public to prepare for a hearing, and that the provision in § 403.31(c) requiring 30 days notice is not burdensome for the State board. In response to the comment that the provision for 30 days notice conflicts with State law, the Secretary notes that, under § 403.32(a)(1), a State must make an assurance in its State plan that it will comply with the Act and the implementing regulations.

With respect to the comment that the regulations should provide for the participation of various groups in preparation of the notice to ensure that the notice provides the information necessary for informed participation, the requirement for appropriate and sufficient notice in § 403.31(b) applies not only to the timing of the notice but also to its form and content. The Secretary would like to clarify that, in order to meet this requirement, the State must design a notice that includes information, or instructs members of the public in how to obtain information, that is sufficient to enable members of the public to present informed views and make recommendations on the plan at the hearing.

Changes: None.

Comments: One commenter suggested the insertion of "academic, occupational" before "training and retraining needs" in § 403.31(f) in order to be consistent with section 113(a)(3)(A) of the Act. The commenter also requested the addition of "and determining the relative allocation of funds among secondary, postsecondary, and adult vocational education programs" after "in developing the State plan."

Discussion: Section 403.31(f) implements section 114(a) of the Act, which provides that the State must consider the relative training and retraining needs of secondary, postsecondary, and adult students after consulting with the appropriate State agencies, in developing the State plan. The commenter's concern with the requirement that the State consider the academic and occupational needs is addressed in § 403.203(e), which implements the requirement in section 113(a)(3)(A) of the Act that the State, in developing its plan, assess the relative academic, occupational, training, and retraining needs at the three instructional levels.

Additionally, the Secretary would like to clarify that other provisions in the regulations fully address the commenter's concern that in allocating funds between the secondary, postsecondary, and adult levels the State should consider the relative needs at the three levels. As noted, § 403.203 provides for a State assessment of the needs at the secondary, postsecondary, and adult levels. Paragraphs (b) (1), (2), and (13) of § 403.32 provide that the State plan must describe the results of the assessment, how the uses of funds address the needs identified in the assessment, and the rationale for the distribution of funds among secondary, postsecondary, and adult programs.

Changes: None.

State plan—Content (§ 403.32)

Comments: Several commenters noted that section 113(b)(20)(B) of the Act appears to require an annual report by a State demonstrating that expenditures aggregated within the State for career guidance and vocational counseling from allotments under title II are not less than the expenditures for guidance and counseling within the State in the fiscal year 1988. Noting that § 403.32(a)(15) would require this report to be submitted only once during each State plan period, the commenters requested that the regulations be changed to conform to the statutory requirement for annual reporting.

Discussion: The requirement in § 403.32(a)(15) for the report to be issued only once during each State plan period is based on congressional intent as expressed in the conference report (H.R. Rep. No. 660, 101st Cong., 1st Sess. 111 (1990)), which states that "[t]he managers intend that this provision will result in States reporting in the State plan on expenditures for guidance and counseling. Although the assessment is to be done annually, reporting is required only as part of the State plan."

Changes: None.

Comments: Some commenters expressed the view that a State's assurance to provide equal access for members of special populations must apply not only to programs funded under Title II of the Act but also to programs funded under Title III of the Act. These commenters also argued that the equal access requirements should not be limited to projects supported with Federal funds. According to one commenter, a contrary interpretation would allow States and other agencies to use "empty pockets" as an excuse not to serve special populations students.

Another commenter supported the provisions of the regulations that clarify that an eligible recipient is required to spend only Federal funds to satisfy the requirements imposed by section 118 of the Act. However, the commenter noted that the regulations did not clarify a State's financial responsibility for providing equal access under § 403.32(a)(18)–(19), and recommended that the Secretary adopt the same rule for both States and eligible recipients and clarify that a State is not required to use non-Federal funds to meet these requirements.

Discussion: The Secretary intends the State assurances to provide equal access that are required by § 403.32(a)(18)–(19) to apply to the entire vocational education program operated by the State and its recipients. These assurances broadly require that members of special populations will be provided equal access to the full range of vocational education programs available to members of the general population, including the specific projects, services, and activities funded under the Act. Equal access required by these provisions means providing members of special populations with an opportunity to enter vocational education that is equal to the opportunity provided to general population students. See the discussion in response to a comment on § 403.111 (a)(2)(i) and (c)(3). The Secretary does not believe that it is possible or appropriate to limit application of the assurances of equal access to students in specific projects, services, and activities that are funded under the Act. To do so would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for members of special populations.

However, the Act does not create new civil rights or individual entitlements to particular services, nor does the Secretary agree that a State has an unlimited financial responsibility to serve special populations students.

Changes: A new § 403.188, which contains provisions parallel to those applicable to an eligible recipient under § 403.193(e), is added to clarify that a State's financial responsibility to serve members of special populations under § 403.32(a)(18)–(19) is not unlimited, and that a State is required to spend only funds awarded under the Act to satisfy these requirements, unless it is required by other applicable laws to spend non-Federal funds.

Comments: One commenter noted that all special populations are covered by a State's assurances to provide equal access. The commenter supports the goal of full and equitable participation for all students in all vocational education programs—not just students with individualized education programs (IEPs) under the Individuals with Disabilities Act (IDEA).

Discussion: The Secretary agrees that § 403.32(a)(18) and (19) requires a State to make an assurance that it will provide equal access to all members of special populations. However, as indicated in § 403.32(a)(20) through (26), other State assurances required by section 118(a) of the Act on their face do not apply to all members of special populations. For example, § 403.32(a)(22) requires a State to make an assurance that it will provide the rights and protections of section 504 of the Rehabilitation Act of 1973 to students with disabilities—not members of all of the special populations.

Changes: None.

Comments: One commenter believed that § 403.32(a)(20) should require that vocational education for students with disabilities be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA as a component in an IEP for any student 16 years of age and, as appropriate, for any student 14 or 15 years of age.

Discussion: Section 118(a)(3)(A) requires that an IEP include as a component vocational education in the least restrictive environment if it is appropriate without regard to the age of the student. The Secretary believes that this requirement is clear from § 403.32(a)(20).

Changes: None.

Comments: Some commenters suggested moving the phrase "with respect to vocational education programs" in § 403.32(a) (21) and (22) to more closely conform to the statutory language and to clarify the meaning of the phrase.

Discussion: The Secretary believes that § 403.32(a) (21) and (22) clearly refer to the rights and protections of students with disabilities with respect to their participation in vocational education programs.

Changes: None.

Comments: Several commenters requested clarification of § 403.32(a)(22), which requires an assurance that students with disabilities who do not have IEPs under the IDEA, or who are not eligible to have IEPs with respect to vocational education programs, will be afforded the rights and protections afforded under section 504 of the Rehabilitation Act of 1973. The commenters believed that an IEP is by definition part of what makes a student qualified to be labeled as disabled. Thus, the commenters believed that the requirement to provide services to students with disabilities who are not eligible for services under the IDEA is internally inconsistent.

Discussion: The definition of "individual with disabilities" for purposes of the Perkins Act is contained in § 400.4(b) and includes individuals in addition to those who have been evaluated under part B of the IDEA and who have IEPs. "Individual with disabilities," which is based on the definition of "disabilities" contained in section 3(2) of the Americans with Disabilities Act (ADA), includes any individual who (1) has a physical or mental impairment that substantially limits one or more of the major life activities of that individual; (2) has a record of this type of impairment; or (3) is regarded as having this type of impairment. As the note to the definition in § 400.4 makes clear, this necessarily would include any individual who is considered to have a disability under either section 504 of the Rehabilitation Act of 1973 or the IDEA.

The Secretary also wishes to emphasize that section 504 of the Rehabilitation Act of 1973 applies independently of the IDEA to any program or activity that receives Federal education funds. Section 504 prohibits discrimination against otherwise qualified individuals with handicaps in federally assisted programs or activities. That Act contains a definition of "individuals with handicaps" which includes the same individuals who would be included in the definitions related to individuals with disabilities in the ADA and the Perkins Act. Therefore, even though an individual does not qualify for an IEP under the IDEA (e.g., the individual is at the postsecondary education level or has a disability that is not covered by the IDEA), that person may be within the definition of an "individual with disabilities" for purposes of the Perkins Act.

Changes: The definition of "individual with disabilities" in proposed § 400.4(b) has been changed to conform more closely to the statutory definition in the Perkins Act and to add a note to clarify the relationship of this definition to definitions contained in the IDEA and section 504 of the Rehabilitation Act of 1973.

Comments: Some commenters recommended amending § 403.32(a)(26)(i)(A) to indicate that the requirement to carry out provisions related to members of special populations under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for these students refers to the personnel identified in §§ 403.13–403.16—not other vocational staff. These commenters also requested that § 403.32(a)(26)(i)(A) be expanded to require as part of this general supervision that the designated personnel and vocational staff jointly plan, review, and sign off on matters related to members of special populations in all phases, and that the State plan describe in sufficient detail the mechanisms by which this supervision occurs and how decisions actually are made jointly by these personnel and the State directors.

Discussion: Section 118(a)(5)(A) of the Act specifically refers to individuals in the State educational agency or in the "State board," which is defined in section 521(34) of the Act to mean the sole State agency responsible for the administration of vocational education, or for the supervision of the administration of vocational education in the State. Thus, the Secretary believes that the Act provides flexibility for a State to determine which personnel most appropriately would provide general supervision of the requirements related to members of special populations. Similarly, the Secretary believes that the State has flexibility to determine what specific responsibilities this individual will have in overseeing the implementation of requirements related to members of special populations. However, section 113(b)(23) of the Act, as implemented in § 403.32(b)(12), requires that the State describe in its State plan how it will comply with the provisions related to members of special populations, which would include a description of the general supervision required under § 403.32(a)(26)(i)(A).

Changes: None.

Comments: Several commenters stated that requiring a State to describe the estimated distribution of funds "for each institutional level" in § 403.32(b)(4) is unduly prescriptive and outside the scope of the Act.

Discussion: The Secretary wishes to clarify that a State must describe the estimated distribution of funds to each of the types of institutions listed by "instructional" level, i.e., secondary, postsecondary, and adult education levels, and not "institutional" levels, as indicated in proposed § 403.32(b)(4). This requirement applies separately to funds awarded under sections 225, 231, and 232 of the Act.

The Secretary believes that § 403.32(b)(4) clarifies the ambiguity in section 113(b)(4) of the Act, which could be read to require a description of the estimated distribution of funds to each individual eligible recipient. The Secretary believes this reading would impose an unnecessary burden on a State. Section 403.32(b)(4) represents a less burdensome interpretation, requiring a State to describe the estimates by instructional level, and is

consistent with the provisions in sections 113(a)(3)(A), 113(b) (1) and (2), and 114(a) of the Act that a State must, in developing its State plan, consider the needs at the secondary, postsecondary, and adult education levels, and include information in the State plan regarding these needs and how they will be met.

Changes: Section 403.32(b)(4) has been revised to clarify that a State is required to estimate the distribution of funds for each type of institution listed, by "instructional" level—secondary, postsecondary, and adult education.

Comments: One commenter stated that § 403.32(b)(6) is overly prescriptive in that it requires a State to conduct a labor market analysis "that is not limited to the area in which the school is located," a requirement not contained in section 113(b)(7) of the Act. The commenter asked if this meant that the area intended by the regulation was out of the local labor market or out of the State.

Discussion: Section 403.32(b)(6) is based on congressional intent, reflected in the conference report, that the labor market analysis "not be limited to the area in which the school is located." (H.R. Rep. No. 660, 101st Cong., 1st Sess. 109 (1990)). For some occupations, a regional or multi-State labor market analysis may more accurately reflect available job opportunities. With the exception of not limiting the market analysis to the area in which the school is located, the regulations give a State the flexibility to determine the appropriate labor market area for the purposes described in § 403.32(b)(6).

Changes: None.

State plans—Submission (§ 403.33)

Comments: Several commenters believed that the regulatory requirement for a 60-day review and comment period by the State Job Training Coordinating Council and the State Council on Vocational Education prior to the submission of State plans to the Department is not based on a statutory requirement. The commenters stated their belief that this time period is excessive.

Discussion: The Secretary believes a 60-day review period is reasonable and necessary to carry out the many provisions in the Act for coordination and review between the State board, the State council, and the State Job Training Coordinating Council. The State Council on Vocational Education (State council) is the entity formally charged with advising the State Board for Vocational Education on the development of a State plan. Section 111(a)(1)(B) of the Act requires that the State board consult with the State council in the development of the State plan, and section 113(c) of the Act requires the State council and the State Job Training Coordinating Council to review any substantial amendments to the State plan prior to submitting the amendments to the Department. Sections 112(d)(2)(A) and (e) of the Act authorize the State council to make recommendations on the State plan and to submit comments on the State plan to the Secretary, and section 113(b)(14) of the Act requires joint planning and coordination with programs conducted under the JTPA. In light of these requirements for coordination and review, the Secretary believes that the 60-day period is reasonable and necessary in order to ensure that a sufficient period of time is provided to the State council in which to perform this crucial review function.

Changes: None.

State plans—Amendments (§ 403.34)

Comments: One commenter requested clarification of what constitutes a "substantial" amendment to an approved State plan as set forth in § 403.34.

Discussion: While general guidance regarding the determination of "substantial" is contained in § 403.34 and 34 CFR 76.140(b), the Secretary believes that a State board should decide in the first instance if changes in the program require an amendment to the State plan.

Changes: None.

State allotments—Awards to State councils (§ 403.50(b)(2))

Comments: Several commenters requested that § 403.50(b)(2) be revised so as to authorize a grant award to a State council as soon as the State council has satisfied the requirements with which it must comply, even if this results in an award to a State council being made before the State plan has been fully approved by the Secretary. The commenters stated that in making the funding of a State council contingent upon the Secretary's approval of the State plan, the regulations risk jeopardizing the objectivity of State councils since the very objections to the State plan that a council might submit could delay the Secretary's approval of that State plan and, therefore, delay the council's funding. The commenters were of the opinion that, under § 403.50(b)(2), the very objectivity of a State council could lead to its fiscal demise and that the current funding scheme undermines the autonomy of a State council. The commenters suggested that the only circumstance under which a council's grant award should be withheld is when the council is not in compliance with specific requirements pertaining to State councils, and that council grants should not be withheld due to non-compliance by the State board with State plan and other statutory requirements, over which the council has no control.

Discussion: Section 501(b) of the Act provides that the Secretary shall make payment to each State council of a State that has a State plan approved under section 114 of the Act and does not specifically provide for an allotment of funds to be awarded to a State council prior to State plan review and approval. However, the Secretary has concluded that section 501(b) of the Act does provide some flexibility in this area. The Secretary recognizes that in the State plan review and approval process there may be instances where a State plan is determined by the Secretary to be in substantially approvable form at a time when the State council has fully complied with all the statutory requirements applicable to the council. The Secretary also has considered the commenters' statements regarding the potential loss of council objectivity, autonomy, or both, if a delay of council funding is the direct result of a council's legitimate objections to a State plan. The Secretary does not think that Congress intended the statutory provisions providing for an allotment to a State council to result in the undermining of the council's objectivity and autonomy or to result in providing a reward to a State council for failing conscientiously and effectively to fulfill its advisory role. It is important to recognize that, for the first time, under the Act a State board for vocational education is required to include in its State plan the results of a detailed needs assessment, as well as program planning information, that it was not required to provide under the predecessor statute. Consequently, the responsibilities of each State council have increased and the importance of each council's advisory function has been heightened by the Act. Because the Secretary believes that Congress intended each State council to assist the State board in the development of a high quality State plan in an objective and effective manner, the Secretary views a grant award to a State council as being authorized at the point at which: (1) There is no further compliance activity required on the part of the council and (2) the Secretary has determined that the State plan is in substantially approvable form. The Secretary believes that this interpretation is consistent with part 76 of the Education Department General Administrative Regulations, under which the Secretary informs a State of when it can begin to obligate funds under the Act after the Secretary determines that the State plan is in

substantially approvable form. (See 34 CFR 76.703).

Changes: The Secretary has revised § 403.50(b)(2) to provide that a State council that otherwise has complied with all applicable requirements and has submitted its annual budget for the following program year will be eligible to receive its grant award for the following year once the Secretary has determined that the State plan is in substantially approvable form.

State plans—Approval (§ 403.52)

Comments: One commenter stated that § 403.52 should provide that the Secretary will inform the State council of the reasons for the delay or non-approval of the State plan. The commenter indicated that State councils must be involved in the planning, development, and review of the State plan, and consequently must be aware of any problems with that plan.

Discussion: As set forth in § 403.19, the role of the State council with respect to State plans is limited to providing advice and recommendations on the development of those plans. There is no provision in the Act requiring the State board to include the State council in the communications between the State board and the Secretary about the State plan during the period between its submission and final action, although the State board may include the State council in this process. However, if a State has to develop a new plan in response to the Secretary's review, the State council must perform its function of providing advice and recommendations on the plan in accordance with § 403.19. The Secretary wishes to point out that 34 CFR 76.106 provides that the State board is required to make available, upon request, correspondence between the Secretary and the State regarding the State plan.

Changes: None.

Comments: One commenter noted that under § 403.52(a)(1) a State plan may be rejected for lack of sufficient quality, but that standards of quality are not included in the regulations. The commenter requested that these standards be stated in the regulations before this requirement is applied.

Discussion: The Secretary is considering whether to publish guidance to clarify the requirements in section 114(a) of the Act that the State plan and amendments must be of sufficient quality to meet the objectives of the Act.

Changes: None.

Comments: One commenter recommended that § 403.52(b)(1) be changed to require the State board to allow 60 days for the State council and State Job Training Coordinating Council to review amendments to State plans. The commenter noted that this change would enable these councils to make comments available to the Secretary in a timely manner.

Discussion: The Secretary agrees that State councils and State Job Training Coordinating Councils should be afforded sufficient time to review and comment on amendments to State plans. The Secretary notes that § 403.33 requires that these councils have at least 60 days to review and comment on State plans. However, the Secretary does not believe that 60 days are needed to review and comment on amendments.

Changes: None.

Basic programs of sufficient size, scope, and quality (§ 403.62)

Comments: One commenter expressed concern that the phrase "programs of sufficient size, scope, and quality" was not defined in the regulations. The commenter expressed the view that, since accountability is a goal of the new Act, defining this term would ensure that all States work with the same criteria. Another commenter suggested that the definition of "programs of sufficient size, scope, and quality" should remain unregulated in order to permit each State the flexibility to create an appropriate State definition.

Discussion: The Secretary believes that § 403.62(a) is clear that programs must be of sufficient size, scope and quality to give reasonable promise of meeting the vocational education needs of students involved in the projects. See also the response to a similar comment related to "size, scope, and quality" as that term is used in § 403.111(c)(1).

Changes: None.

State-operated schools (§ 403.63)

Comments: Several commenters expressed concern that projects, services, and activities carried out by a school operated by a State agency would be subject to the onerous application requirements for eligible recipients described in § 403.190. The commenters did not believe these requirements should be applicable to a State-operated school.

Discussion: Section 403.190 implements the requirements in sections 111 (c)(1), (d), and (e), 118(c), and 240 of the Act, which on their face do apply to State operated schools.

Changes: None.

State programs and State leadership activities (§ 403.70)

Comments: One commenter suggested that the term "projects" as it appears in the first sentence of § 403.70 be changed to the term "programs" in order to be consistent with past Departmental interpretation of these terms.

Discussion: Historically, in the regulations implementing the State vocational education program, the Secretary has used the term "program" to refer to activities that are carried out directly by the State and has used the term "projects" to refer to activities carried out by subrecipients of a State. The Secretary agrees with the commenter that a change is needed in the regulations. The Secretary believes that under sections 201 (b) and (c) of the Act, a State could operate a "program" by carrying out the activities directly or operate a "project" by making awards to other entities to carry out the activities.

Changes: Section 403.70 has been changed to clarify that a State may operate either a "program" or a "project." A conforming change has been made to § 403.71.

Vocational student organizations (§ 403.71)

Comments: Several commenters expressed concern that § 403.71(c) provides a list of unallowable expenditures for vocational student organizations (VSOs). These commenters were particularly concerned because the regulations prohibit the use of funds under the State Programs and State Leadership Activities for student organization travel. Some of the commenters felt that travel costs and expenses to attend leadership conferences or meetings to conduct VSO national and State association business should be an allowable expenditure under the Act and recommended that § 403.71(c)(1) be revised to allow these travel costs. Several commenters indicated that the list of prohibitions on the use of funds awarded under the Act for VSOs contained in § 403.71(c) will have a "chilling effect" on the recruitment of minority students. A number of commenters also recommended that § 403.71(c)(2) be revised to permit Future Farmers of America officers to purchase appropriate supplies.

One commenter assumed that the restrictions in § 403.71(c) on expenditures for vocational student organizations applied only to expenditures under the State Programs and Leadership Activities authority and did not extend to expenditures for VSO activities under title II, part C of the Act.

Discussion: The limitations listed in § 403.71(c) are consistent with the section 521(42) of the Act, which defines "vocational student organizations" to mean those organizations for individuals enrolled in vocational education programs that engage in activities "as an integral part of the instructional program," and are supported by a clear statement of congressional intent in the conference report accompanying the

Act. (H.R. Rep. No. 660, 101st Cong., 1st Sess. 117 (1990)). Item 86 of that report stipulates that Congress intended "that current restrictions on use of Perkins funds for awards and student travel apply to the provision authorizing States to support vocational youth organizations" under section 201(c)(3) of the Act. The regulations implementing the Vocational Education Act of 1963, as amended, listed the VSO activities in § 403.71(c) as particular costs that are not integral to vocational instruction. Generally, to be an integral part of vocational education instruction, an activity would have to be supervised by vocational education personnel who are qualified in the occupational area and available to all students in the instructional program without regard to membership in any student organization. The regulations implementing the Vocational Education Act of 1973, as amended, described VSO activities that are considered to be an integral part of vocational education training, and the Secretary believes that these provide guidance to a State and its recipient as to the type of VSO costs that can be paid from funds awarded under title II, part A of the Perkins Act.

The limitation on expenditures for VSO activities is consistent with this Department's past practice of not allowing the use of grant funds for supportive services that provide direct financial benefit to individuals without clear statutory authority for these expenditures. This limitation applies to all funds awarded under the Act, not just funds awarded under title II, part A of the Act that are available for the support of VSOs.

If an eligible recipient wishes to use funds awarded under title II, part C of the Act for costs of VSO activities, these costs would be subject to the general limitations on supportive services as well as all other limitations on the use of funds under title II, part C of the Act. Because title II, part C of the Act authorizes the use of funds for supportive services only in very narrow circumstances and with respect to only a few particular populations, the Secretary believes that the same limitations stated in § 403.71(c) generally apply to the use of funds under title II, part C of the Act for VSO activities. See the discussion of supportive services for students who are economically disadvantaged, students of limited English proficiency, and students with disabilities in response to a comment on § 403.190(a)(2)(ii)(B). However, a VSO cost, for example, that would be allowable from funds awarded under title II, part C of the Act, is the cost of field or laboratory work incidental to vocational training so long as the activity is supervised by vocational education personnel who are qualified in the occupational area and is available to all students in the instructional program without regard to membership in any student organization.

Changes: Section 403.71(c) has been changed to add examples of VSO expenditures that are allowable costs under the State Programs and State Leadership Activities.

Sex Equity Program (§ 403.90)

Comments: One commenter requested that the conditions for the eligibility of community-based organizations to participate in the Sex Equity Program be identical to conditions established by § 403.81(c) for the participation of community-based organizations in the Single Parent, Displaced Homemakers, and Single Pregnant Women Program.

Discussion: The conditions established by § 403.81(c) for the participation of community-based organizations in the Single Parents, Displaced Homemakers, and Single Pregnant Women Program reflect the requirement of section 221(a)(3) of the Act. There is no parallel statutory provision for the Sex Equity Program. However, the Secretary notes that the definition of "community-based organization" in § 400.4(b) requires such an organization to be of "demonstrated effectiveness" in order to be eligible for funding under any portion of the Act. A State has the authority to interpret or further define "demonstrated effectiveness" for purposes of participation in the Sex Equity Program by a community-based organization, including the imposition of all of those conditions set forth in § 403.81(c). However, in this event, the State would have to identify this as a rule based on a State's interpretation pursuant to § 400.9(c).

Changes: None.

Programs for Criminal Offenders (§ 403.102)

Comments: One commenter stated that the Senate Report accompanying the Act requires that the State corrections educational agency responsible for administering the Programs for Criminal Offenders must distribute funds available for this program to State correctional institutions, prisons, and reformatories based on the relative number of individuals incarcerated in those institutions. The commenter requested that the regulations reflect this requirement.

Discussion: While section 225 of the Act establishes the parameters within which a State corrections educational agency must use funds reserved for programs for criminal offenders, section 225 of the Act does not require a formula for the distribution of funds as discussed by the commenter. Moreover, the distribution formula referred to by the commenter is not a provision in the Act passed by Congress.

Changes: None.

Eligibility for Secondary, Postsecondary, and Adult Vocational Education Programs (§ 403.110(c))

Comments: One commenter felt that § 403.110(c) would allow organizations not currently existing to qualify for start-up funds to participate in programs funded under section 232 of the Act. The commenter recommended that § 403.110(c) be modified so that any funds received by a recipient not previously offering a vocational education program must be used to provide services within the grant year.

Discussion: Section 232(d)(1) of the Act, which is implemented by § 403.110(c), includes an entity that either provides or will provide vocational education in a program that meets the requirements of section 235 of the Act as an institution eligible to receive an award under the Postsecondary and Adult Vocational Education Programs. This regulation reflects the requirement of section 232(d)(1) of the Act.

Because funds not obligated during the fiscal or program year for which the funds were allocated must be returned to the State for reallocation under § 403.120(a), an entity must provide a program of services for each year an award is received.

Changes: None.

Improving vocational education (§ 403.111(a)(1))

Comments: Some commenters believed that a State should have the discretion to define the term "improve" as it is used in § 403.111(a)(1). One of these commenters believed that the State then should be held accountable for the procedure used to determine improvement. Another commenter believed that improvement would be easier to determine once a State has adopted standards and measures under section 115 of the Act. Another commenter believed that improvement of programs should be measured by the gain in student participation and performance but recommended that all proposed activities should be funded, provided a reasonable connection is made in the local plan between each activity and improved student participation and performance. One commenter recommended adding to the

regulations the guidelines on "program improvement" applicable to the Carl D. Perkins Vocational Education Act to assist States in developing criteria by which local applications can be categorized according to program improvement, expansion, or new programs.

Discussion: The Secretary believes that a State and its eligible recipients should have the flexibility to determine how funds awarded under §§ 403.112, 403.113, or 403.116 will be used to "improve" vocational education programs for their students. The Secretary does not believe that it is possible to develop a definition of "program improvement" that would apply in all cases. Thus, while a State is free to use the guidelines provided in the previous regulations implementing the previous act, they are not required to do so.

Changes: None.

Comments: One commenter said that, while a State could improve selective parts of vocational education within the State with the participation of special populations, the State could not accomplish a great improvement in vocational education and at the same time ensure success of all special populations with the small amount of funds it receives under the Act. The commenter recommended that the expectation for improvement implied in § 403.111(a)(1) be limited and specifically detailed.

Discussion: The requirement of § 403.111(a)(1) to use funds awarded under §§ 403.112, 403.113, or 403.116 to improve vocational education programs applies to eligible recipients—not States. Moreover, §§ 403.190(c) and 403.193(e) make clear that the Act does not create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. On the contrary, once an eligible recipient makes an assurance to serve members of special populations in projects assisted under title II, part C of the Act, the eligible recipient is allowed to use Federal funds at the same time for general improvement or to serve the general student population under § 403.111(a)(3).

Changes: None.

Providing full participation [§ 403.111(a)(2)(i)]

Comments: One commenter believed that limiting the requirements of § 403.111(a)(2)(i) to projects assisted with funds awarded under §§ 403.112, 403.113, or 403.116 creates ambiguity concerning the requirement for an eligible recipient to provide full participation for members of special populations. The commenter also argued that this is inconsistent with the regulatory provisions applicable to performance standards and evaluations, which apply to entire local vocational education programs. Some commenters argued "projects" should be changed to "programs" to be consistent with congressional intent that funds awarded under Title II, Part C of the Act be used only in local programs that provide for the full participation of members of special populations, including the provision of supplementary services, in the entire program. Another commenter argued that the use of the term "projects" rather than "programs" and the distinction created between access and required services is contrary to prior civil rights rulings and the Civil Rights Restoration Act, which defines the term "program" broadly, as well as the requirements of the IDEA and section 504 of the Rehabilitation Act of 1973.

Other commenters expressed confusion as to the applicability of the requirement in § 403.111(a)(2)(i) to provide for the full participation of members of special populations by providing supplementary services. These commenters argued that the Perkins Act does not require eligible recipients to provide supplementary services to members of special populations in their State and locally funded vocational programs and recommended that § 403.111(a)(2)(i) be amended to clarify that the requirement to provide supplementary services does not apply to projects not funded under the Act.

Discussion: Despite the apparent confusion of a few commenters, § 403.111(a)(2) clearly applies only to projects assisted with funds awarded under §§ 403.112, 403.113, or 403.116. (Sections 403.112, 403.113, and 403.116 implement the provisions of the Act governing the distribution of funds under title II, part C of the Act.) Moreover, the Secretary believes that limiting the applicability of § 403.111(a)(2) is well supported by the language of the Act itself. Section 403.111(a) implements the provisions of section 235(a) of the Act, which specifically applies only to funds awarded under title II, part C of the Act. Both the express language of section 235 of the Act and its placement in the provisions of the Act specifically related to funds awarded under title II, part C of the Act support a more narrow application of the requirement to provide full participation only in projects, services, and activities receiving Federal funds under the State plan. Moreover, the Secretary has modified § 403.191 to clarify that the local evaluation required under section 117 of the Act could include only specific projects, services, and activities receiving Federal funds under the State plan, unless the State board determines under § 403.201(a)(3) that a broader evaluation is necessary to be effective. See the discussion in response to comments on § 403.191. Therefore, the Secretary is not taking an inconsistent regulatory approach in implementing section 235 of the Act from that used to implement the requirements of section 115 of the Act concerning standards and measures or of section 117 of the Act concerning evaluations.

Section 403.111(a) also reflects the differences in the requirements of section 235 of the Act and other Federal statutes. Section 118 of the Act does not define the requirement to provide "equal access" to members of special populations in terms of the definition of "program" in the Civil Rights Restoration Act or the requirements imposed by the IDEA or section 504 of the Rehabilitation Act of 1973. While specific requirements to provide rights and protections under, for example, section 504 of the Rehabilitation Act of 1973, are imposed in the Perkins Act, the term "equal access" as it is used in section 118(a) (1) and (2) of the Perkins Act, which is implemented in § 403.32(a) (18) and (19), is not tied to the provisions of any other statute. On the contrary, the use in section 235 of the Act of the terms "equitable participation" and "full participation" in imposing requirements on eligible recipients under title II, part C of the Act to serve members of special populations evidences a deliberate congressional intent to distinguish the type of services required by the Act from the rights and protections ensured by other Federal statutes, such as the IDEA and section 504 of the Rehabilitation Act of 1973, which use different terminology regarding the rights of an individual with disabilities. However, the Secretary wishes to emphasize that any individual's rights and protections conferred by the IDEA, section 504 of the Rehabilitation Act of 1973, or other Federal laws are in no way limited or diminished by the Perkins Act.

Changes: None.

Comments: Some commenters believed that § 403.111 was unclear that members of special populations must participate fully in the improvement of vocational education courses—not just receive supplementary services.

Discussion: The Secretary believes that § 403.111 is clear as to the required participation of members of special

populations. Not only does § 403.111(a)(1) require that an eligible recipient use funds awarded under § 403.112, 403.113, or 403.116 to improve vocational education programs, but § 403.111(a)(2) additionally requires that all of the projects assisted provide for the full participation of members of special populations. Thus, members of special populations must be provided full participation in projects funded under § 403.112, 403.113, or 403.116.

Changes: None.

Comments: Numerous commenters recommended deleting or narrowly defining the requirement to provide "other services" in addition to supplementary services as proposed in § 403.111(a)(2) as part of providing for the full participation of members of special populations in projects assisted under § 403.112, 403.113, or 403.116. Some commenters believed that a State should have the discretion to define the term "full participation." Other commenters believed that "other services" should be restricted to those related to the required supplementary services or should be defined in relation to vocational education or to education in general. Another commenter believed that, if the phrase "other services" is retained, the regulations should impose a cap or limit on the amount of funds that could be used for supplementary services. Some commenters argued that a broad interpretation of "other services" would change the intent of the Act and require the exhaustion of funds on supplementary services, thus depriving the general student population of funds. According to some commenters, using Federal vocational funds exclusively for special populations would imply that vocational education is for special populations students only and perpetuate a perceived stigma attached to vocational education. Most commenters believed that the definition of "supplementary services" in § 400.4(b) clearly expresses the intent of Congress as to what specific services are required to be provided to special populations as part of the requirement for "full participation" and argued that the addition of "other services" to this provision during the negotiated rulemaking created ambiguity, an open-ended requirement that was impossible to satisfy, and unlimited financial liability on the part of eligible recipients.

Other commenters concurred in or strongly supported the mandate to provide full participation through supplementary and other services to all members of special populations, including individuals in correctional institutions. One commenter noted that the addition of the words "other services" would mean that "supplementary services" are not limited only to those specific services listed in the definition of that term in § 400.4(b). The commenter believed that this indicated a confidence that local program officials are able to determine the range of supplementary services most appropriate to the needs of their special populations students. Another commenter thought that "other services" should include child care, stipends, preparatory services, or tuition. This commenter believed that, if the Secretary intended to exclude these costs from allowability, then § 403.111(a)(2)(i) should be clarified to prevent an eligible recipient's audit exposure.

Discussion: The Secretary agrees that the requirement in proposed § 403.111(a)(2)(i) to provide "other services" in addition to the supplementary services required by section 118(c) of the Act has created a great deal of confusion concerning what specific services an eligible recipient is required to provide to special populations students. The negotiators recommended the addition of this phrase to the draft regulation to clarify that an eligible recipient has the flexibility to serve its special populations students in the most suitable manner, which includes providing services other than the services within the definition of "supplementary services" as that term is defined in § 400.4(b), when an eligible recipient chooses to do so. However, even though many of the commenters have interpreted this phrase as requiring unlimited services to these students, in some cases without regard to which specific services are allowable under the Act, the types of services that an eligible recipient must provide to members of special populations with funds awarded under title II, part C of the Act in addition to supplementary services are described in section 118(c) of the Act, which is implemented by § 403.190(b). However, the Secretary wishes to emphasize that an eligible recipient may use State and local funds to provide the services to members of special populations required by full participation under § 403.111(a)(2)(i) and § 403.190(b) or to provide additional services if the State or eligible recipient determines those services are needed.

Changes: The Secretary has clarified that the reference to "other services" in § 403.111(a)(2)(i), is to the services other than supplementary services that an eligible recipient is required to provide under § 403.190(b).

Comments: One commenter recommended that "full participation" be clarified to mean "equitable participation" plus "supplementary services."

Discussion: The Secretary believes that the requirement for "full participation" is distinct from that for "equitable participation" under the Act. Section 403.111(a)(2)(i) interprets "full participation" to require the provision of supplementary services and other services required by § 403.190(b) necessary for those members of special populations already enrolled in vocational education to succeed. As discussed with respect to comments on the requirement to provide equitable participation, § 403.111(c)(3) has been modified to clarify that providing for the "equitable participation" of members of special populations means giving those students an opportunity to enter vocational education that is equal to that given to general population students. In instances where a particular service would be necessary for a special populations member to enter vocational education, such as an alternative application form or a translator who speaks the student's language, an eligible recipient must provide the service pursuant to the requirement to provide equitable participation. See the illustrations of providing equitable participation under § 403.111(c)(3) in appendix A to part 403.

Changes: None.

Comments: One commenter suggested that one example of a way of providing for "full participation" is the development, implementation, and use of a so-called "individualized vocational education plan" (IVEP), which would provide the basis for a student's recruitment and placement into a vocational education program.

Discussion: While an IVEP, such as those currently used by some States, is one way of making a determination as to which specific services an individual student may need to succeed in vocational education, this is not the only method. The Secretary believes that States and eligible entities must have the flexibility to work together in developing the most appropriate methods of ensuring the success of their students.

Changes: None.

Comments: One commenter asked for guidelines on how LEAs and postsecondary institutions must provide for the full participation of individuals in correctional institutions, who are one category of special populations, as that

term is defined in § 400.4(b). The commenter questioned whether an LEA, for example, is required to provide services to individuals in a correctional institution located within the LEA's boundaries.

Discussion: The requirement to provide full participation under § 403.111(a)(2) applies only to special populations students already enrolled in an eligible recipient's projects assisted under §§ 403.112, 403.113, or 403.116. An eligible recipient whose enrollment includes individuals who are in correctional institutions must provide for the full participation of those students. However, the question of whether individuals in correctional institutions may enroll in the programs of a particular eligible recipient is an issue outside of the scope of the Act and, generally, must be decided as a matter of Federal, State, or local penal law.

Changes: None.

Serving a limited number of sites or program areas (§ 403.111(a)(2)(ii))

Comments: Some commenters opposed the requirement in § 403.111(a)(2)(ii) that eligible recipients use funds awarded under title II, part C of the Act to assist projects that operate at a limited number of sites or with respect to a limited number of program areas. These commenters believed that this restriction is inconsistent with the intent of the Act to increase the participation of special populations in the full range of vocational education programs and services, and is confusing because the Act also requires that priority be given to the sites and program areas with the highest concentrations of special populations. The commenters recommended that this restriction be deleted from § 403.111(a)(2). Another commenter felt that § 403.111(a)(2) implied that, with respect to rural districts, the number of programs offered should be limited and should not include the total range of programs traditionally considered to be offered in a comprehensive vocational education program.

Discussion: Section 403.111(a)(2)(ii) implements the requirement of section 235 of the Act that funds awarded under title II, part C of the Act be used at a limited number of sites or in a limited number of program areas. For example, as suggested by one commenter, on its face section 235 of the Act would prohibit a rural district with only one site from assisting each program area in which vocational education is offered with funds awarded under § 403.112, 403.113, or 403.116. The Secretary does not agree that this requirement is inconsistent with the requirement to give priority to sites or program areas with the highest concentrations of members of special populations. Together these requirements will concentrate funds awarded under Title II, Part C of the Act in the sites or program areas serving members of special populations.

Changes: None.

Serving general population students (§ 403.111(a)(3))

Comments: Some commenters supported the requirement of § 403.111(a)(3) to provide supplementary services to special populations before serving the general student population with funds under the Act. Another commenter objected to allowing services to general population students only after supplementary services are provided to special populations students because it would be impossible to serve the general student population. Another commenter questioned in what specific circumstances funds could be used to improve the entire vocational education effort.

Some commenters believed that § 403.111(a)(3) should be amended to include §§ 403.32(a)(18)-(26) and 403.190(d) in the list of requirements to serve members of special populations that an eligible recipient must meet before funds awarded under §§ 430.112, 403.113, and 403.116 may be used to serve students who are not members of special populations.

Discussion: While the Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations, section 235(a) of the Act imposes a requirement to give priority for funding under title II, part C of the Act to sites or program areas with the highest concentrations of members of special populations. Accordingly, the provisions of both §§ 403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. However, the Secretary believes that, once an eligible recipient makes an assurance that it will serve members of special populations, an eligible recipient may serve the general student population at the same time with funds awarded under the Act. Furthermore, § 403.190(d) imposes the requirement, as a threshold for an eligible recipient to qualify for funding under the Act, that an recipient provide information in its application for funding, as the State board requires, to demonstrate its compliance with the requirements in § 403.32(a)(19)-(26). Consequently, it is not necessary to reference these requirements again in § 403.111(a)(3) as suggested by some commenters.

Changes: None.

Giving priority to sites or program areas that serve the highest concentrations of members of special populations (§ 403.111(b))

Comments: Numerous commenters supported the examples in § 403.111(b) of how an eligible recipient can give priority for assistance to sites or program areas that serve the highest concentrations of members of special populations because they provide flexibility. These commenters believed that Example 3 to § 403.111(b) allows an eligible recipient to fund program areas that have the greatest job demand and opportunities for employment even at sites that do not have the highest concentrations of members of special populations as a means of improving special populations participation in vocational education in program areas in which special populations are underrepresented. According to the commenters, this would result in more and better vocational education for students who were previously not served by making the priority serving high concentrations of members of special populations in program areas where economically viable employment possibilities exist. One commenter argued that, without such an approach, funding would be funneled into programs that have traditionally had high special populations enrollment.

Other commenters believed that the examples in § 403.111(b) imply that both sites and program areas must be prioritized and that either revisions should be made in § 403.111(b) or the examples should be deleted. Many other commenters thought that the use of a funding cut-off point in the examples was unnecessary and confusing and suggested adding different and more specific examples.

Other commenters believed that the use of a cut-off point suggested that the requirement was to fund sites or program areas with higher than average concentrations of members of special populations—not the highest concentrations. These commenters argued that "sites or program areas" must be read as a single term to capture the highest concentrations of members of special populations and that the cut-off point for funding would occur when the funds would be spread too thin to provide programs of sufficient size, scope, and quality to be effective.

Another commenter objected to Example 3 because the commenter

believed the example allows funds to go to sites or program areas that do not have the highest concentration of members of special populations. Other commenters believed that Example 3 must be tightened up to avoid abuses. Still other commenters interpreted Example 3 as not requiring that the site or program area funded have the highest concentrations of members of special populations and supported the example for this reason.

Discussion: An eligible recipient must give priority either to sites or to program areas that serve the highest concentrations of special populations students—but need not give priority to both. The Secretary does not agree that Example 3 in § 403.111(b) would allow an eligible recipient to disregard the requirement to fund either a site or a program area that has the highest concentrations of members of special populations, although the caption of Example 3 is somewhat misleading, or that Example 3 is subject to other abuse. Under Example 3, which was added to § 403.111(b) as a result of the negotiated rulemaking, an eligible recipient would first choose a site from among those sites that have the highest concentrations of special populations students. Then the eligible recipient would fund, at that site, a program area in which members of special populations have been previously underenrolled. Thus, as illustrated by Example 3, while an eligible recipient could fund a program area in which members of special populations have been underrepresented, it would have to do so at a site chosen from among those with the highest concentrations of members of special populations. As explained in the preamble to the NPRM, the intent of Example 3 is to provide new and better opportunities in vocational education for members of special populations.

The Secretary does not agree that the use of a funding cut-off point in the examples is confusing, nor does the Secretary agree that the three examples do not provide sufficient guidance as to how an eligible recipient may give priority in funding. In this respect, the Secretary notes that none of the commenters suggested alternative or additional examples that could be added to the regulations.

Changes: The caption for Example 3 in § 403.111(b) is changed to clarify that it is an example of one method of giving priority to a limited number of sites with high concentrations of members of special populations—not of giving priority to limited program areas.

Comments: Some commenters thought that actual numbers of special populations students rather than percentages should be used to determine the sites or program areas that have the highest concentrations of special populations pursuant to the requirements of § 403.111(b) because basing this determination on percentages, as the examples in § 403.111(b) do, would favor small schools and result in serving fewer students. Some commenters wanted an additional example added to § 403.111(b) to illustrate the use of actual numbers of students instead of percentages.

Discussion: The Secretary agrees that high concentrations of special populations students could be determined based on either actual numbers, percentages, or a combination of both. Section 403.111(b) provides only examples of ways in which an eligible recipient gives priority to sites or program areas, and does not prevent the use of actual numbers of students either alone or in combination with percentages.

Changes: A note is added after the three examples in § 403.111(b) to clarify that actual counts of special populations students may be used alone or in combination with percentages to determine the sites or program areas with the highest concentrations of members of special populations.

Comments: Numerous commenters did not believe that the requirement of § 403.111(b) to give priority to the sites or program areas serving the highest concentrations of members of special populations should apply in all cases. One commenter argued that, in a State that has over 50 percent special populations enrollment in vocational education, eligible recipients should not have to prioritize their use of funds under § 403.111(b) because the intent of the Act would be met by any use of funds. Other commenters believed that an eligible recipient with a large program with high numbers of special needs students should not be constrained in any way in giving priority for the use of funds. One commenter suggested that the regulations provide for a waiver of the requirement to give priority tied to a set percentage rate for special populations so that an eligible recipient whose participation rate for members of special populations exceeded the standard would have greater flexibility in the use of funds. Another commenter believed that an eligible recipient should have the flexibility to provide a proportionate share of funding to serve members of special populations in "low concentration" sites or program areas.

Discussion: The Secretary does not agree that the intent of the Act would be met by an eligible recipient that failed to give priority in the use of funds to sites or program areas with the highest concentrations of members of special populations. Not only does section 235(b) of the Act clearly require an eligible recipient under title II, part C of the Act to give this priority, but also section 235(a) of the Act requires an eligible recipient to use funds awarded under the secondary, postsecondary, and adult vocational education programs (Title II, part C of the Act) only at a limited number of sites or with respect to a limited number of program areas. Therefore, an eligible recipient must give priority to sites or program areas with highest concentrations of members of special populations in determining which particular sites or program areas to fund.

Changes: None.

Comments: One commenter questioned whether § 403.111(b) would allow an eligible recipient to fund sites and program areas that fall below the cut-off point in the examples if the needs of special populations are being met. Another commenter recommended that once priority is given to sites with high concentrations of members of special populations, any remaining funds could be used to fund additional sites or program areas.

Discussion: While § 403.111(b) requires that sites or program areas with the highest concentrations of members of special populations receive only a priority and not an absolute or exclusive preference for funding, § 403.111(a)(2)(ii) requires that the projects funded under title II, part C of the Act be operated at only a limited number of sites or with respect to a limited number of program areas. Therefore, while an eligible recipient could fund sites or program areas below a cut-off point, it could not fund all sites or program areas with funds awarded under title II, part C of the Act.

Changes: None.

Size, scope, and quality of vocational education programs assisted with funds awarded under Title II, Part C of the Act (§ 403.111(c)(1))

Comments: One commenter requested that a definition of the term "size, scope, and quality" be added to § 403.111(c)(1). According to the commenter, defining this term would ensure that all States work with the same criteria to achieve accountability.

Discussion: The Secretary believes that § 403.111(c)(1) is clear that programs must be of sufficient size, scope, and quality to be effective.

(Similarly, § 403.62 requires that projects be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.) Moreover, section 115 of the Act clearly envisions that each State will develop its own standards and measures to ensure accountability for the use of vocational education funds in programs within the State.

Changes: None.

Integration of academic and vocational education in programs assisted with funds awarded under Title II, Part C of the Act (§ 403.111(c)(2))

Comments: Some commenters believed that a State should have the discretion to define the phrase "the integration of academic and vocational education," which is used in § 403.111(c)(2). Other commenters requested additional clarification of the terms in the phrase "integration of academic and vocational education" and requested that the interrelationship of this requirement to other requirements in the Act be discussed.

Discussion: The Secretary believes that the meaning of the phrase "integration of academic and vocational education" is clear from its context in § 403.111(c)(3), which requires that students achieve both academic and occupational competencies through a coherent sequence of courses. For instance, this requirement would prevent an eligible recipient from using funds awarded under title II, part C of the Act to pay the cost of academic courses that were not directly related to the occupational skills being taught in a vocational education program.

Changes: None.

Providing equitable participation (§ 403.111(c)(3))

Comments: Numerous commenters recommended that the Secretary clarify the requirement for eligible recipients to use funds awarded under title II, part C of the Act in programs that provide for the equitable participation of members of special populations. Many commenters recommended adding to § 403.111(c)(3) the definition of "equitable participation" that was deleted from the draft regulation during the negotiated rulemaking. Two other commenters believed that the language of § 403.111(c)(3) was adequate and should be retained without modification.

Some commenters believed that § 403.111(c)(3) should emphasize that the requirement to provide equitable participation means providing the services needed to succeed in high quality programs in an integrated setting in order to avoid tracking of, or watering down of curriculum for, special populations students. These commenters asked that § 403.111(c)(3) clarify that the requirement to provide equitable participation applies across the entire spectrum of each special population. The commenters were concerned that only the easiest to serve within each population would be served in the absence of clarification. These commenters also requested that the term "equitable participation" be clarified in terms of the requirements of sections 113, 117, 118, and 240 of the Act related to special populations, which the commenters believed to be mutually reinforcing.

Discussion: The Secretary agrees that more clarification of the requirement to provide "equitable participation" is needed than is provided by the examples in appendix A to part 403. As indicated in response to comments on § 403.32(a)(18)–(26), the Act does not create individual entitlements to particular services. Rather, the Secretary interprets the requirement in section 235(c)(1)(C) of the Act to provide equitable participation to members of special populations to require giving those students an opportunity to enter vocational education that is equal to that given to general population students. This interpretation is similar to the one included in the draft regulations submitted to negotiated rulemaking, but it clarifies the distinction in the Act concerning the requirement to provide an opportunity to members of special populations to enter a vocational education program as opposed to the requirement to provide the services necessary to enable members of special populations to participate fully and successfully in a vocational program. See the comment and discussion on providing full participation (§ 403.111(a)(2)(i)).

While sections 113, 117, 118, and 240 of the Act impose requirements that complement the requirement to provide equitable participation, the Secretary believes that these requirements are separate and distinct and that further clarification of the manner in which these requirements complement the equitable participation requirement is not needed.

Changes: Section 403.111(c)(3) has been changed to clarify that "equitable participation" means providing members of special populations with an opportunity to enter vocational education that is equal to that afforded to the general student population.

Comments: One commenter requested a definition of "access" as that term is used in § 403.111 and other sections implementing section 235 of the Act.

Discussion: None of the statutory or regulatory provisions cited by the commenter use the term "access." However, a State is required to make assurances that it will provide equal access to the entire vocational education program within the State under § 403.32(a) (18) and (19). These requirements are discussed in response to comments on § 403.32(a) (18) and (19).

Changes: None.

Allocation of funds under the Secondary School Vocational Education Program to local educational agencies (§ 403.112(d))

Comments: Several commenters objected to the requirement in § 403.113(d)(2)(ii) that a consortium arrangement under § 403.112(d)(2)(i) must serve primarily as a structure for operating joint projects that provide services to all participating LEAs. Some commenters argued that the requirement is too restrictive in that a consortium in a rural, sparsely populated area could not always operate joint projects under which all members receive services. These commenters, therefore, suggested that it would be better to let States decide when a waiver is needed. Other commenters supported § 403.112(d)(2) as proposed.

Discussion: The Secretary believes that Congress intended that a consortium be established primarily for undertaking joint projects serving all members. If a consortium were established simply to make subgrants to participating members to operate separate projects, then the consortium would serve no purpose that could not be achieved by direct awards from the State to these LEAs.

If an LEA is located in a rural, sparsely populated area and can demonstrate to the State that it cannot participate in a consortium operating joint projects, then a State may waive the minimum grant requirement and make a direct grant of less than $15,000 to that LEA under the authority of § 403.112(d)(3).

Changes: None.

Comments: One commenter advised that a consortium arrangement established for the purpose of meeting the $15,000 minimum grant amount for LEAs under § 403.112(d)(2) should be allowed only if the consortium centers around an area vocational education school.

Discussion: Section 231(b)(1) of the Act allows LEAs to form a consortium for purposes of meeting the minimum grant amount. An area vocational education school is considered to be an LEA if it meets the definition in § 400.4(b). In instances in which an area

vocational education school is an LEA, it can become a member of a consortium established under section 231(b)(1) of the Act.

However, in the absence of a statutory mandate, the Secretary does not believe it is appropriate to require through regulation that each consortium have as a member an area vocational education school.

Changes: None.

Comments: Several commenters suggested that § 403.112(d)(2) be clarified to bar subgrants by the fiscal agent of a consortium to participating LEAs.

Discussion: Section 403.112(d)(2) requires that a consortium arrangement must serve primarily as a structure for operating joint projects that provide services to all participating LEAs and that the projects must meet the size, scope, and quality requirement of § 403.111(c)(1). The example following § 403.112(d)(2)(iii) illustrates that the fiscal agent of a consortium may not subgrant back to a participating LEA the amount it contributed to the consortium. However, if the conditions of § 403.112(d)(2) are met, the fiscal agent of a consortium may make subgrants to the participating LEAs if the subgrants increase the administrative efficiency of a consortium. These subgrants may be for less than $15,000 but the projects assisted must meet the size, scope, and quality requirement of § 403.111(c)(1).

Changes: None.

Comments: One commenter suggested that the regulations be changed to clarify that the waiver for LEAs located in rural, sparsely populated areas does not waive the size, scope, and quality requirements of § 403.111(c)(1).

Discussion: The Secretary agrees that the waivers for LEAs located in rural, sparsely populated areas does not waive the size, scope and quality requirement of § 403.111(c)(1).

Changes: Paragraph (iii) has been added to § 403.112(d)(3) to clarify that the waiver of the minimum grant requirement does not waive the size, scope, and quality requirement of § 403.111(c)(1).

Eligibility of State corrections agencies for funding under sections 231 and 232 of the Act (§§ 403.112, 403.113, and 403.116)

Comments: One commenter maintained that the proposed regulations violate the statutory directive to include a State corrections agency in the formula entitlement under sections 231 and 232 of the Act. Another commenter stated that a State corrections agency should not be considered to be an LEA or an eligible institution, and therefore, should not be eligible for funding under section 231 or 232 of the Act. The commenter suggested that the final regulations should indicate that a State corrections agency is not eligible for an allotment under the secondary or postsecondary formula.

Discussion: A State corrections educational agency or a State or local correctional institution that has administrative control and direction over a vocational education program is included in the definition of "local educational agency" set forth in § 400.4(b) and section 521(22) of the Act. Consequently, these agencies or institutions are eligible for an allocation of funds under §§ 403.112, 403.113, and 403.116, which implement sections 231 and 232 of the Act. However, these agencies or institutions are subject to the same statutory and regulatory requirements (such as the formula and minimum grant amount requirements) as are other eligible recipients. Moreover, if both a State correctional institution and a local correctional institution apply for funding under § 403.112, 403.113, or 403.116, care must be exercised to avoid duplicative counting of any student who could be construed to be under the control of both a State and a local correctional institution.

Changes: None.

Allocating funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies (§ 403.113)

Comments: Two commenters urged that § 403.113(a)(1)(i) be changed to permit a State to encourage, but not require, the establishment of a consortium for purposes of the State's making direct allocations of funds to an area vocational education school or an intermediate educational agency that would otherwise have been allocated to an LEA.

Discussion: Neither the regulations nor the Act itself addresses the question of whether a State may require an LEA and an area vocational education school or an intermediate educational agency to form a consortium for purposes of making a direct allocation of funds to the area vocational education school or the intermediate educational agency under § 403.113(a). The Act neither prohibits the State from requiring consortia nor specifically authorizes the State to require consortia. The Secretary believes that, because this kind of issue is so inherently related to a State's administration of its program, and because the Act is silent on this issue, the question of whether authority exists to require consortia is a matter to be determined under State and local laws and regulations.

Changes: None.

Comments: One commenter objected to the provisions in § 403.113(d) that allow an LEA to retain the amount of its formula allocation not distributed to an area vocational education school or an intermediate educational agency even though that amount is less than $15,000. The commenter believed that this provision is inconsistent with congressional intent that funds be aggregated to meaningful levels. The commenter also suggested that, if the provision were retained, it at least should be amended to require an LEA with a balance of less than $15,000 to join a consortium under § 403.112(d)(2).

Discussion: The Secretary believes that the minimum grant amount requirement set forth in section 231(b)(1) of the Act establishes only the eligibility of an LEA to receive an award under the Act. Once an LEA receives a minimum allocation of $15,000 or more under the statutory allocation formula, the Secretary believes the LEA is entitled to retain and spend its award even though the remainder is less than $15,000 due to a transfer to an area vocational education school or an intermediate educational agency pursuant to section 231(d) of the Act. Moreover, the Secretary believes that the provision for establishing a consortium in section 231(b) of the Act applies only to an LEA that otherwise would be ineligible to receive funds under the Act because its formula allocation is less than $15,000.

Changes: None.

Determining the number of economically disadvantaged students (§ 403.114)

Comments: One commenter requested that the regulations be revised to allow for the use of student eligibility data under the free or reduced-price lunch program to identify particular economically disadvantaged students at school sites and in vocational education programs.

Discussion: As indicated in a note to the definition of "economically disadvantaged family or individual" in § 400.4(b), a State or recipient may use the total number of students participating in a free or reduced-price meals program to determine eligibility of sites for projects, services and activities under the Act. However, the National School Lunch Act prohibits the identification of these students by name. Therefore, that information cannot be used to identify particular economically disadvantaged students.

Changes: None.

Allocation of funds under the Postsecondary and Adult Vocational Education Programs (§ 403.116)

Comment: One commenter objected to the provisions in § 403.116(b), which requires that, under the statutory formula for distributing funds under the Postsecondary and Adult Vocational Education Programs, a State count only Pell Grant recipients and Bureau of Indian Affairs-assisted students enrolled in vocational education as defined in § 400.4(b). The commenter argued that Congress did not intend that a State count only students enrolled in a vocational education program.

Discussion: Section 232(a) of the Act requires that, in order to be counted for purposes of distributing funds, Pell grant recipients and recipients of assistance from the Bureau of Indian Affairs must be enrolled in programs meeting the requirements of section 235 of the Act, which necessarily includes satisfying the definition of "vocational education" in § 400.4(b). However, in response to the commenter, the Secretary has changed § 403.116 to more closely conform to the language of section 232 of the Act to clarify the relationship between the requirements of section 235 of the Act, which are implemented in § 403.111, and the definition of "vocational education."

Changes: Section 403.116 is amended to indicate that only students enrolled in programs meeting the requirements of § 403.111 are counted under the statutory formula for distributing funds under the Postsecondary and Adult Vocational Education Program.

Comments: Several commenters requested that § 403.116(b)(2) be amended to include counts of students assisted under the Tribally Controlled Community Colleges Assistance Act and the Navajo Community College Act.

Discussion: The Secretary does not believe it is appropriate to amend by regulation the unambiguous statutory requirement for fund distribution.

Changes: None.

Comments: One commenter requested that the regulations permit a consortium arrangement among postsecondary institutions for the purpose of meeting the $50,000 minimum grant amount requirement in section 232(c)(1) of the Act. The commenter argued that, since this consortium arrangement is permitted for LEAs for the purpose of meeting the minimum grant amount of $15,000 for those agencies, a parallel arrangement should be established for postsecondary institutions.

Discussion: Section 231(b) of the Act provides authority for an LEA to enter into a consortium arrangement with other LEAs for the purpose of meeting the minimum grant requirement for those agencies. While section 232 of the Act establishes a minimum grant requirement for postsecondary institutions, this section contains no corresponding provision for a consortium arrangement for meeting the minimum grant requirement. The Secretary believes that, if Congress had intended that a consortium arrangement for postsecondary institutions be allowed, a provision corresponding to the consortium arrangement in section 231 of the Act for LEAs would have been included in section 232 of the Act for postsecondary institutions.

Changes: None.

Comment: One commenter asked that the $50,000 minimum grant amount for recipients under the Postsecondary and Adult Vocational Education Program established by section 232(c)(1) of the Act be reduced to $15,000, which is the minimum grant amount established for recipients under the Secondary School Vocational Education Program by section 231(b)(1) of the Act.

Discussion: The Secretary does not agree that it would be appropriate through regulation to change the $50,000 minimum grant requirement imposed under section 232(c)(1) on recipients under the Postsecondary and Adult Vocational Education Programs.

Changes: None.

Alternative distribution formula for the Postsecondary and Adult Vocational Education Programs (§ 403.118)

Comments: One commenter advocated that § 403.118 should be changed to permit the use of two separate postsecondary formulas that recognize the difference in various institutional arrangements found at the postsecondary level. The commenter argued that a single formula will not work equitably given such differences as tuition charges, types of students served, and program offerings in various postsecondary institutional arrangements.

Discussion: The Secretary agrees that the statutory formula established under section 232(a) of the Act cannot always effectively identify economically disadvantaged students attending certain types of postsecondary institutions. In these instances, section 232(b) of the Act provides for a waiver of the statutory formula and permits a State to propose an alternative formula that better identifies the highest numbers of economically disadvantaged students. The Act, however, does not authorize the use of separate formulas for particular types of postsecondary institutions. Rather, the Act specifies that each institution's award must be proportionate to the relative share its enrollment of economically disadvantaged students is to that number enrolled in all eligible institutions.

Changes: None.

Comments: One commenter maintained that only students enrolled in vocational education programs should be counted under an alternative formula allowed under § 403.118. The commenter pointed out that to permit counts of non-vocational education students in an alternative formula will drive funds to institutions enrolling few vocational education students at the expense of institutions that have higher numbers of vocational education students who are economically disadvantaged.

Discussion: The Secretary shares the commenter's concern that the use of non-vocational student counts in an alternative formula might lead to substantial allocations to institutions with few vocational education students at the expense of institutions primarily offering vocational education programs. However, section 232(b) of the Act enumerates six examples of alternative criteria for allocating funds to institutions, none of which requires that students counted under the alternative formula be enrolled in a vocational education program. Therefore, the Secretary does not believe it is appropriate to impose this requirement by regulation.

Changes: None.

Comments: Several commenters objected to § 403.118(c), which establishes five conditions that must be met by an alternative formula for the distribution of funds for the Postsecondary and Adult Vocational Education Programs. The commenters maintained that the establishment of these conditions would violate the prerogative of a State to develop an alternative formula. However, other commenters agreed that there should be a positive relationship between funding and actual enrollment in institutions.

Discussion: The five conditions that must be met by an alternative formula under § 403.118 were established to clarify what the Secretary believes to be the intent of the Act with respect to waiving the statutory funding formula. The Secretary must have uniform standards against which to judge the legal sufficiency of a proposed waiver formula. The Secretary does not believe that the standards (or conditions) in § 403.118(c) exceed the intent of the Act, but rather the Secretary believes that they are logically derived from the requirements of § 403.118(b).

Changes: None.

Comments: Several commenters objected to the requirement in § 403.118(c)(1) that an alternative formula for the distribution of funds for the Postsecondary and Adult Vocational Education Programs be based on direct counts of students enrolled in institutions. The commenters advanced differing rationales for their positions. Some commenters pointed out that direct student counts do not necessarily reflect the needs of the area served by an institution since relatively small numbers of members of special populations attend postsecondary institutions. Other commenters suggested that an alternative formula be based on population data of the area served by an institution.

Discussion: The requirement in § 403.118(c)(1) that an alternative formula include direct counts of students enrolled in institutions receiving awards implements section 232(b)(2) of the Act, which requires that alternative criteria be based on "the numbers of individuals attending institutions within the State." Section 232(b)(2) of the Act offers six examples of alternative criteria, all of which are based on direct counts of enrolled students. While other criteria are possible, the Secretary believes that Congress clearly intended that alternative criteria must relate to direct counts of enrolled students.

Changes: None.

Comments: One commenter recommended that a strict scrutiny standard be established in the regulations for granting waivers of the statutory funding formula under the Postsecondary and Adult Vocational Education Programs. The commenter pointed out that in the past States have defined their entire geographic area as economically depressed. The commenter also suggested that great care be used in reviewing the definitions and data sources used in a waiver request.

Discussion: Section 403.118(c) requires that an alternative formula include direct counts of students enrolled in institutions, and that the criteria used in identifying students to be counted directly relate to the students' status as economically disadvantaged. These standards will preclude approval of any proposed alternative formula that distributes funds on any basis other than status as economically disadvantaged. The Department also reviews data submitted with waiver requests for accuracy.

Additionally, section 232(b) of the Act allows the Secretary to waive the statutory allocation formula only in those cases where the State demonstrates that the statutory allocation formula does not result in a distribution of funds to the institutions within the State that have the highest number of economically disadvantaged individuals and that an alternative formula would result in such a distribution.

The Secretary interprets this requirement as meaning that a State must demonstrate that an alternative formula will identify a more accurate count of economically disadvantaged individuals enrolled in institutions than would the statutory formula.

Changes: Paragraph (6) has been added to § 403.118(c) to indicate that the Secretary waives § 403.116(b)(2) in those cases where an alternative formula identifies a more accurate count of economically disadvantaged individuals enrolled in institutions in the aggregate than does the formula in § 403.116(b)(2).

Reallocation of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs (§ 403.120(a))

Comments: One commenter requested that § 403.120(a) be amended to allow recipients of funds under title II, part C of the Act up to 18 months to expend those funds before unexpended amounts must be returned to the State for reallocation. The commenter pointed out that a 12-month expenditure period will force many recipients to make obligations based on hasty decisions to avoid returning funds to the State. Another commenter recommended that § 403.120 be changed to allow local recipients two years in which to expend funds.

Discussion: Section 403.120(a) establishes the expenditure period for an award as a fiscal or program year. In § 400.4(b), "program year" is defined as a 12-month period, while under 34 CFR 77.1(c), "fiscal year" also is defined as a 12-month period. However, because funds under the Act typically become available to the Department for obligation to a State on July 1 of the fiscal year in which funds are appropriated (for use, generally, during the course of the following school year), under section 411 of the General Education Provision Act, and the relevant appropriations act, the Secretary believes that a State may make funds available to an eligible recipient on this same basis under 34 CFR 76.704. Therefore, a State may make funds available to eligible recipients for a period of up to 15 months, depending on when the State itself may begin to obligate funds.

Changes: None.

State assistance for vocational education support programs by community-based organizations (§ 403.141(b)(3))

Comments: One commenter noted that § 403.141(b)(3) requires an applicant for funding under this program to give assurances that it will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages 16 through 21, inclusive. The commenter recommended that the regulations clarify that this assurance for special consideration does not exclude individuals outside the 16- to 21-year-old age range from receiving services under the program.

Discussion: The Secretary agrees that the assurance for special consideration does not exclude individuals outside the 16- to 21-year-old age range from receiving services under the program. However, because the assurance requires that special consideration be given only to certain individuals within a specific age range, the Secretary feels that no additional clarification is necessary in the regulations.

Changes: None.

Business-Labor-Education Partnerships for Training Program (§ 403.173)

Comments: One commenter suggested that § 403.173(a)(2) be amended to clarify that a State may use funds for both basic and advanced academic skills instruction. The commenter noted that there is a need to reflect the Act's emphasis on advanced skills as well as basic skills.

Discussion: The enumeration of allowable expenses in § 403.173(a) is not exhaustive. Section 332(d) of the Act requires the Secretary to prescribe policies for projects carried out under this program and to include examples of allowable expenses for business-labor-education partnerships. However, the Secretary agrees that expenditures for advanced academic skills instruction would be allowable expenses under this program to the extent that these costs were incurred in carrying out the projects, services, and activities described in § 403.170.

Changes: None.

Reservation of funds under the basic programs (§ 403.180)

Comments: One commenter suggested that a mathematical example be provided in § 403.180 to illustrate how the "hold-harmless" requirement for the Programs for Criminal Offenders should be applied.

Discussion: While the regulations provide examples for reserving funds for administration in § 403.180(b)(4) and for implementing the "hold-harmless" requirements for certain programs in

§ 403.180(c), they do not provide a specific example of how to implement the "hold-harmless" requirement for the Programs for Criminal Offenders in § 403.180(a)(1)(ii). Because the "hold-harmless" requirement for criminal offenders differs from the other "hold-harmless" requirements with respect to funds counted, the Secretary agrees that a specific example for the Programs for Criminal Offenders would clarify the regulations.

Changes: An Example 3 has been added to follow § 403.180(c)(3) to explain how the "hold-harmless" requirement under § 403.180(a)(1)(ii) applies to the Programs for Criminal Offenders.

Comments: One commenter objected to the use of the terms "reserved" and "obligated" in § 403.180(a)(1)(ii) for establishing the "hold-harmless" level for the Programs for Criminal Offenders. The commenter pointed out that the Act was amended to establish the "hold-harmless" level for this program based on amounts "expended" for the fiscal year 1990.

Another commenter objected to the requirement in § 403.180(a)(2)(ii) (A) and (B) that establishes the "hold-harmless" level for the Programs for Criminal Offenders as the amount reserved under section 202(6) of the CDPVEA from its FY 1991 grant plus any other amounts that were obligated for this purpose from its FY 1991 grant. The commenter pointed out that the effect of this interpretation would be to increase the setaside for the Programs for Criminal Offenders to a level above one percent in some States. The commenter argued that, if this had been congressional intent, Congress would have simply increased the setaside percentage for this program. The commenter requested that § 403.180(a)(2)(ii)(B) be deleted.

Discussion: The intent of a so-called "hold-harmless" provision like the one set forth in section 102(c)(2) of the Act is to ensure that funds for a particular purpose do not decrease below a level established in a previous year. Section 102(c)(2) of the Act, as amended by Public Law 102–103, establishes a hold-harmless provision for the Programs for Criminal Offenders. Section 102(a)(5) of the Act requires a State to make available an amount equal to one percent of its allotment under section 3(a) of the Act for Programs for Criminal Offenders. The hold-harmless requirement contained in section 102(c)(1) of the Act, as originally enacted, required a State to reserve for the Programs for Criminal Offenders an amount that "is not less than the amount reserved for [this] program in FY 1990," which was also one percent. However, Public Law 102–103 amended this requirement. Section 102(c)(2) of the Act, as amended, requires a State to reserve for the Programs for Criminal Offenders not less than the amount that the "State expended under this Act for such program in the Fiscal Year 1990." In a case where Congress directs that "not less than" a particular amount be made available for a purpose, it clearly intends that the hold-harmless rule will increase the amount that otherwise would be available by establishing a floor.

Funds from the Federal appropriation for Fiscal Year 1990 are available to a State beginning July 1, 1991, until September 30, 1992. Therefore, interpreting section 102(b)(2) of the Act to require a State to reserve only that amount of the one percent reserve from FY 1990 funds for the Programs for Criminal Offenders expended prior to that time could require it to reserve considerably less than the one percent required to be reserved under section 102(a)(5) of the Act and, given the prorated reduction made if a State's allotment for Title II of the Act is less than in FY 1990, it could never be more than the amount reserved under section 102(a)(5) of the Act. Thus, to fulfill the clear congressional intent of the hold-harmless requirement, that is, that in some instances the amount reserved for Programs for Criminal Offenders be increased above the amount that is required to be reserved under section 102(a)(5) of the Act, the Secretary has interpreted the hold-harmless provision in section 102(c)(2) of the Act to include the one percent amount required to be reserved from the FY 1990 appropriation, plus any additional amount obligated from other reserves for projects, services, and activities for criminal offenders in correctional institutions from the FY 1990 appropriation. The term "obligated" is used rather than "expended" consistent with the long standing Departmental practice of interpreting "expenditure" to mean "obligation" as defined in 34 CFR 76.707.

Changes: None.

Comments: One commenter suggested that § 403.180(b)(3) be revised to require that the reserve for State Programs and State Leadership Activities must be eight and one-half percent as opposed to "not more than" eight and one-half percent as the regulations specify. The commenter believed that the programmatic change called for in the Act will not occur successfully without the assistance of the full setaside for State Programs and State Leadership Activities.

Discussion: The requirement in § 403.180(b)(3) that the reserve for State Programs and State Leadership Activities be not more than eight and one-half percent is based on the language in section 102(a)(3) of the Act, which requires that the setaside be an amount equal to not more than eight and one-half percent of a State's allotment. If Congress had intended that a State be required to reserve a full eight and one-half percent for this program, then the Act would have so stated.

Changes: None.

Maintenance of fiscal effort (§ 403.182)

Comments: A commenter noted that § 403.182 does not address the maintenance of effort requirement, but rather indicates the Secretary's responsibilities if maintenance of fiscal effort does not occur. The commenter also noted that the option of proportionately reduced allocations should be included in the regulations.

Discussion: Section 502(a) of the Act, as implemented in § 403.182, makes maintenance of fiscal effort a clear condition of a State's eligibility to receive a grant and does not provide for a proportional reduction in the grant award, as some Federal education statutes do. To allow the Secretary to implement the maintenance of effort requirement and still make grant awards on a timely basis, § 403.32(a)(1) requires a State to include in its State plan an assurance that it will comply with all the requirements of the Act and regulations, including the maintenance of effort requirement. If, after a State receives a grant, it becomes clear that the State did not maintain effort in accordance with its assurance, then that State would be required to return the full amount of the grant awarded under the State plan.

Changes: None.

Administrative cost requirements (§ 403.186)

Comments: Most commenters expressed support for § 403.186. However, a few commenters asked on what authority the Secretary (in § 403.186(b)(2)) can authorize a State to use funds reserved from its allotment for the State Assistance for Vocational Support Programs by Community-Based Organizations to administer that program.

Discussion: The Secretary believes that the authority to use funds under this program for administrative costs is contained in the "necessary and reasonable" cost principle, which is implicit in the statute and is consistent with government-wide cost principles (see Office of Management Budget

Circular No. A-87). Additionally, it is the historic practice of this Department to allow a State to use program funds for necessary and reasonable administrative costs if the Act provides for no specific setaside for this purpose, but does not prohibit or otherwise limit the use of funds for administrative costs.

Changes: None.

Local application requirements (§ 403.190(a)(1)(i))

Comments: Some commenters requested that § 403.190(a) be amended to require that an eligible recipient describe in its application: (1) how its uses of funds will reflect the needs identified under § 403.32(b)(1); (2) how members of special populations and their parents will be involved in the process of assessing their needs and identifying the services to meet those needs; (3) how access to programs of good quality will be provided to students who are educationally disadvantaged in addition to the populations listed in section 240(4) of the Act; and (4) the numbers of individuals in each special population by program area and, for students with disabilities, by individual disability.

Discussion: Section 240 of the Act gives the State board the authority to determine the requirements of local applications in addition to those specifically imposed by the Act. Accordingly, the Secretary does not wish to impose any further requirements beyond those specified in the Act, although a State board could impose these requirements if it identifies them in accordance with § 400.9(c).

Changes: None.

Comments: Some commenters objected to the requirement in § 403.190(a)(1)(i)(B) that an eligible recipient include in its application a description of how it will use funds awarded under § 403.112, 403.113, or 403.116 and funds from other sources to improve the program with regard to each requirement and activity described in § 403.111(c) and (d). The commenters argued that the effect of this provision would be to reimpose the matching requirement that the Act removed.

Discussion: Section 240(1) of the Act expressly requires that an application for funding under title II, part C of the Act include a description of how the applicant will use the funds available under title II, part C of the Act and "from other resources" to improve the program with regard to each use of funds described in section 235 of the Act. However, the Secretary does not agree that this requirement in effect reimposes a matching requirement at the local level. Neither section 240(1) of the Act nor § 403.190(a)(1)(i)(B) imposes a requirement that an eligible recipient spend any particular amount of funds; rather, these provisions require an applicant only to describe the funding, from whatever resources, that will be devoted to program improvement.

Changes: None.

Access for economically disadvantaged individuals (§ 403.190(a)(1)(iii))

Comments: One commenter supported the requirement in § 403.190(a)(1)(iii) to provide access to high quality programs for economically disadvantaged students, students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts—not by simply making special populations aware of available vocational education programs.

Discussion: Section 240(a)(4) of the Act clearly requires both affirmative outreach and recruitment efforts with respect to the listed groups of students in addition to the information provision requirements contained in section 118(b) of the Act.

Changes: None.

Use of funds for supportive services (§ 403.190(a)(2)(ii)(B))

Comments: One commenter supported the provisions in § 403.190(a)(2)(ii)(B), which the commenter believed permitted the use of funds for child care and other necessary supportive services to assist students to succeed. Another commenter argued that child care should be allowable under § 403.111(d) if it is conducted on a group basis and involves instruction in child care. Another commenter suggested that, since child care is costly, a State could set State-imposed requirements that would be reasonable and effective, thereby allowing access for special populations and flexibility for eligible recipients. One commenter was uncertain whether child care is an allowable expenditure under title II, part C of the Act. This commenter also questioned whether tuition or transportation would be allowable and requested a definition of "special aid."

Discussion: Section 240(12)(B) of the Act, which is implemented in § 403.190(a)(2)(ii)(B), requires an eligible recipient to include in its application for funding an assurance that it will provide a vocational program that assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services, such as counseling, English-language instruction, child care, and special aids. While these supportive services are not expressly included in section 235(c)(2) of the Act as examples of activities that may be conducted with funds awarded under title II, part C of the Act, the Secretary does not believe that Congress intended to require these services for the populations named without authorizing the use of funds awarded under title II, part C of the Act to pay the cost of providing these supportive services. Thus, the Secretary considers the types of supportive services for the particular populations listed in § 403.190(a)(2)(ii)(B) to be allowed costs under title II, part C of the Act. However, the Secretary believes that the examples of supportive services that are included in § 403.190(a)(2)(ii)(B) provide sufficient guidance to an eligible recipient as to the types of special aids that would be allowable for these populations and that it is most appropriate for an eligible recipient to determine which supportive services and special aids will best allow its students to succeed. Services that are similar in intent and cost to counseling, English-language instruction, and child care are allowable costs as special aids. For example, transportation could be provided to economically disadvantaged students for the same reason and for about the same or a lesser cost as child care.

Changes: None.

Local application assurances—Special populations (§ 403.190(b))

Comments: The Secretary received many comments on § 403.190(b), which would require an eligible recipient that desires financial assistance under title II of the Act to make the assurances required by section 118(c) of the Act to provide certain services and activities for members of special populations with respect to any project that is funded under title II or title III of the Act. Some commenters were confused as to whether § 403.190(b) would apply the requirements of section 118(c) of the Act to any vocational project and supported limiting the requirements of § 403.190(b) to an eligible recipient's projects receiving funds under title II or title III of the Act.

Some commenters strongly opposed applying the requirements of § 403.190(b) to funds awarded under title III of the Act. Many of these commenters thought that the programs in title III of the Act made sufficient provisions for services to members of special populations and that they should not be subject to the requirements of § 403.190(b). For example, title III, part B of the Act requires that not less than one-third of the funds under that part must be used in economically depressed areas or areas with high rates of unemployment to help improve the home

environment and quality of family life. Another commenter argued that, if all Federal funds were devoted to providing equal access and supplementary services to members of special populations instead of overall improvement in vocational education programs, members of special populations would be given access to separate and inferior education.

Many commenters believed that proposed § 403.190(b) would require eligible recipients under title II of the Act to provide equal access and supplementary services to all members of special populations enrolled, or planning to enroll, in vocational education. These commenters strongly objected and questioned whether this requirement would be consistent with section 118 of the Act, would subject recipients to legal and audit exposure even if the special populations students in all projects assisted under the Act received supplementary services, or would ever permit recipients to serve general population students with funds awarded under the Act.

Other commenters believed that the assurances should apply to an eligible recipient's entire vocational education program because an eligible recipient is required to give members of special populations equal access to the full range of vocational education programs available to individuals who are not members of special populations under section 118(a) of the Act. Some commenters supported requiring recipients of funds under title III of the Act—especially under the Tech-Prep Education Program—to make the same assurances as recipients under title II of the Act. Still other recipients expressed confusion as to whether, and under what circumstances, eligible recipients had to provide services to students in projects funded under title III of the Act.

Discussion: The local assurances to provide services to special populations students are applicable to any project funded under the State plan—whether the project is assisted with funds awarded under title II or title III of the Act. While section 118(c) of the Act is clear that only recipients of funds awarded under title II of the Act are required to make the assurances related to members of special populations, section 118 of the Act is more broadly worded as to which special populations students must be served. Both the broad language of section 118(c) of the Act and the placement of the provisions in title I of the Act which relates to State plan and other general requirements—rather than within title II, part C of the Act—support a broader interpretation of the scope of these assurances. The scope of this requirement is consistent with the revisions to the scope of the local evaluation required under § 403.191(a), which only requires recipients to evaluate the particular projects, services, and activities assisted under the State plan, unless the State board determines that a broader evaluation is necessary to be effective. See the discussion in response to comments on § 403.191, which implements the local evaluation requirement.

Both the basic programs under title II of the Act, which are listed in § 403.60, and the so-called "special programs" under title III of the Act, which are listed in § 403.130, are subject to the requirements of the State plan. However, the Secretary is modifying proposed § 403.130 to delete the Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities (Supplementary State Grants Program) from the list of special programs because title III, part F of the Act, which authorizes the Supplementary State Grants Program, does not require that funds awarded under that part be used in accordance with the State plan, as is required for the other programs listed in § 403.130. Similarly, the State-Administered Tech-Prep Education Program, which is authorized by title III, part E of the Act, also is not listed in § 403.130 as a special program because the Act does not require a State to conduct the program in accordance with the State plan.

Changes: Section 403.190(b) has been changed to clarify that the assurances to provide services to members of special populations apply only to an eligible recipient's projects that are assisted with grant funds awarded under the basic and special programs—not to every project assisted under title III of the Act. Section 403.130 has been changed to remove the Supplementary State Grants Program from the list of special programs, that are subject to the requirements of the State plan. Conforming changes also have been made to §§ 403.32(d), 403.131(c), 403.187(b), 407.10(a), 407.22 (b) and (c), and 407.31.

Comments: One commenter noted that the assurances required of an eligible recipient under § 403.190(b) apply only to projects assisted under the Act while the assurances required in the State plan under § 403.32(a)(18)–(26) apply to the entire vocational education program in a State—including local programs. This commenter requested that an eligible recipient's obligations be clarified.

Discussion: The State assurances in § 403.32(a) (18) and (19) require a State to ensure that members of special populations are given equal access to vocational programs within the State. Because the Secretary interprets these assurances as applying to a State's entire vocational education program, eligible recipients also are required to provide equal access to their vocational education programs. See the discussion in response to a comment on the scope of the § 403.32 assurances. However, the State assurances required under § 403.32(a)(20)–(26) relate to a State's responsibility to monitor and administer the Act consistently with requirements imposed by other statutes, for example, the IDEA, and reinforce an eligible recipient's responsibilities under those other statutes. Section 403.190(d) requires an eligible recipient to provide sufficient information to the State, as the State board requires, to demonstrate that the eligible recipient is in compliance with § 403.32(a)(18)–(26).

Changes: None.

Comments: Some commenters were concerned that, if the requirement in § 403.190(b) to provide supplementary services to special populations students, and the corresponding financial obligation, were interpreted broadly, there would not be any Federal vocational education funds available to serve general population students.

Discussion: The Act does not create an individual or unlimited entitlement for members of special populations, but it does impose a requirement to give priority to the sites or program areas with the highest concentrations of members of special populations and to provide the services and activities described in § 403.190(b) to members of special populations. However, as discussed in response to a comment on § 403.111(a)(3), the Secretary believes that, once an eligible recipient assures that members of special populations will be served, an eligible recipient may serve the general student population with funds awarded under the Act.

Changes: None.

Comments: One commenter believed that § 403.190 is unclear because it suggests that funds awarded under the Act might be used for assistance for special populations in other, non-vocational related aspects of schooling. The commenter argued that this would deplete funds for vocational education for all students.

Discussion: The Secretary does not agree that § 403.190 is unclear concerning the use of funds for vocational activities. On the contrary, § 403.190(b) specifically ties the use of

funds for supplementary services to those specific projects that are funded under basic or special programs authorized by title II or title III of the Act, respectively.

Changes: None.

Comments: One commenter believed that § 403.190(b)(1) erroneously refers to section 626 of the IDEA and requested that the reference be changed to section 602(a)(19) and (20) (20 U.S.C. 1401(a)(19) and (20)), which provides the definition of "transition services" and the required contents of the IEP, respectively. According to the commenter, section 626 of the IDEA authorizes discretionary grants to States for Statewide planning for the development and improvement of transition services for students with disabilities.

Discussion: Section 403.190(b)(1) accurately reflects section 118(c)(1), which incorporates by reference section 626 of the IDEA—not section 602(a)(19) and (20).

Changes: None.

Comments: Several commenters requested that § 403.190(b)(2) interpret the requirement that an eligible recipient assess a student's special needs. Some of these commenters also requested that the regulations clarify that the definition of "supplementary services," which lists specific services, provides only examples of minimum services that must be provided and that § 403.190(b)(3) requires that the actual services provided be based on current, valid, and relevant vocational assessment information such as that in an IEP. Some commenters recommended that this include an assessment of their interest and abilities. Some of these commenters recommended that the Secretary require a range of vocational assessment services to be made available to students, and that the specific services to be provided be included in the student's IEP or, in the case of members of special populations who are not in special education, in an individualized vocational education plan.

Discussion: The Secretary believes that States and their eligible recipients should have the flexibility to determine together what assessment of special needs will best serve their students, and, therefore, no specific definition is added to the regulations. However, the Secretary does not agree that the list of services included in the definition of "supplementary services" in section 521(38) of the Act is intended to provide only examples. The language of this statutory provision on its face clearly indicates that the list of services is exhaustive. Nor does the Secretary agree that it would be appropriate to impose further requirements to provide supplementary services beyond those imposed by the Act or other Federal laws, such as the IDEA.

Changes: None.

Comments: Some commenters requested that the assurances required by § 403.190(b)(2) and (3) be amended to require the active involvement of members of special populations and their parents in identifying the special needs of these students and the supplementary services to be provided.

Discussion: The assurances required by § 403.190(b)(2) and (3) accurately reflect the language of section 118(c)(2) and (3) of the Act. The requirement for participatory planning imposed by section 118(d) of the Act and referred to by the commenters is implemented in § 403.205.

Changes: None.

Funding for supplementary services (§ 403.190(c))

Comments: Some commenters objected to § 403.190(c) because it does not require eligible recipients to spend non-Federal funds to provide the services and activities described in § 403.190(b) to members of special populations. The commenters noted that, if § 403.190(c) required that eligible recipients provide members of special populations with the services and activities described in § 403.190(b) only to the extent possible with funds awarded under the Act, it would have the effect of limiting local services that are necessary for these students to succeed in vocational education. The commenters recommended that the words "to the extent possible with funds awarded under the Act" be deleted. Some commenters recommended deleting § 403.190(c) entirely because they argued that the assurances in § 403.190(b) are threshold, programmatic requirements that an eligible recipient must meet—without regard to source of funding—to be eligible for funding under the Act. One commenter recommended amending § 403.190(c) to clarify that, although eligible recipients are not required to use State and local funds to provide the services described in § 403.190(b) to members of special populations, they may do so.

Other commenters requested that § 403.190(c) be deleted because it implies that an eligible recipient must use non-Federal funds to provide the services required by § 403.190(b), which is inconsistent with § 403.193(e), or must exhaust its Federal funds providing services for members of special populations. Another commenter argued that § 403.190(c), in effect, reimposes the local matching requirement that was removed by the Act. The commenter argued that requiring financial information would not assist either eligible recipients or a State in achieving the intended purposes of the Act. Another commenter objected to the requirement that an eligible recipient indicate in its local application whether any non-Federal funds will be used to provide the services and activities described in § 403.190(b). This commenter felt that, because the first local applications under the Act have been submitted to the States without including this information, this requirement would be burdensome.

A different commenter argued that, since statewide maintenance of effort is required by the Act, § 403.190(c) is unnecessary and should be deleted. Another commenter recommended that the regulations clarify that, when an eligible recipient must provide services under § 403.190(b) to members of special populations in projects funded under title III of the Act, the eligible recipient is required to use only funds awarded under title II of the Act—not funds awarded under both title II and title III of the Act.

Discussion: The Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. Accordingly, the provisions of both §§ 403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. The circumstances under which an eligible recipient may serve general population students are discussed in response to comments on § 403.111(a)(3). However, the Secretary believes that funds awarded under title II, part C of the Act and funds awarded under the special programs authorized by title III of the Act also are available for this purpose so long as the specific services provided are allowable costs under the particular special program for which the funds were awarded.

The purpose of requiring that an eligible recipient indicate in its application for funding whether non-Federal funds will be used to provide the services in § 403.190(b) is not related to the maintenance of effort requirement, which applies only to State—not local—expenditures for vocational education, nor does it impose a local matching requirement. Rather, the Secretary intends to highlight in § 403.190(c) that an eligible recipient may use State and local funds to provide

the services described in § 403.190(b) to members of special populations—even though it may not be required. The Secretary also believes that a State must have the information required by § 403.190(c) to enable it to meet its overall responsibilities to members of special populations under section 118(a) of the Act. After the final regulations become effective, a State may allow its eligible recipients merely to amend the applications already filed without imposing additional, undue burdens.

Changes: None.

Assessment and planning for special populations (§ 403.190(e)(2))

Comments: Some commenters recommended that the word "economically" be deleted from § 403.190(e)(2) (i) and (ii) because they believed that Congress intended an eligible recipient to report on the numbers of all disadvantaged students—not just economically disadvantaged students. These commenters also recommended that § 403.190(e)(i) be amended to require that the numbers for each special population be presented by occupational program area, and for disabled students, by type of disability.

Discussion: The requirements of § 403.190(e)(2) (i) and (ii) accurately reflect the language of section 111 (d) and (e) of the Act. However, a State may impose additional requirements if it identifies them in accordance with § 400.9(c).

Changes: None.

Local evaluation—Burden of implementation (§ 403.191(a)(1))

Comments: Numerous commenters expressed the view that the requirement in § 403.191(a)(1) that a recipient must evaluate annually its entire vocational education program, without regard to the particular projects supported with funds awarded under the Act, imposes a burden on recipients. Some of these commenters believed the requirement would impose an unacceptable financial and paperwork burden on eligible recipients. None of the commenters provided estimates of the cost to a local recipient; some commenters estimated a national aggregate cost of $21,000,000 each year. Many commenters expressed the view that the cost of the proposed evaluation is disproportionate to the amount of funds awarded under the Act to a recipient, and predicted that many recipients would refuse to participate in the program assisted under the Act. Some commenters predicted that recipients would conduct superficial evaluations to hold costs down, or recipients would use most of their funds for evaluations rather than for program improvement activities and services, including supplementary services for members of special populations. Most of the commenters opposing the evaluation requirement on the basis of cost recommended that § 403.191 require a recipient to evaluate only those particular projects supported with funds awarded under the Act.

Other commenters stated that, while they support the proposed rule as the best method for an effective evaluation, they acknowledged that it might pose financial difficulties for some recipients, and urged the Secretary to consider permitting a recipient to use cost saving measures such as sampling or providing for a phase-in period. However, another commenter urged the Secretary not to permit sampling because of the high risk of error and potential for manipulation. This commenter also opposed permitting a recipient to phase in the requirement because a recipient would not collect complete data and could not precisely target program improvement activities. Another commenter asked the Secretary to indicate what constitutes an acceptable sample. Another commenter who supported the proposed rule believed that it would be less costly to conduct an annual evaluation based on all students in all projects, rather than to attempt to evaluate the extent to which students participating in projects funded under the Act have benefitted from the use of the funds awarded under the Act.

One commenter objected to the scope of the evaluation requirement, on the grounds that the statewide standards and measures in § 403.202, plus the standards and measures already in use by State and local entities, are extensive and will lead to a superficial evaluation. The commenter proposed that the regulations permit the standards and measures required by section 115(a) of the Act to be phased in over the three-year period of the State plan. Thus, for example, the State would apply, in the first year, the standards and measures relating to academics; in the second year, the standards and measures relating to vocational skills attainment; and in the third year, the standards and measures relating to follow-up and special services. Other commenters proposed evaluating the entire program over a five-year period. A few commenters proposed that the evaluation be conducted less frequently than annually because programs do not change significantly from year to year.

Many commenters argued that the requirement to evaluate an entire program unnecessarily duplicates other evaluation requirements, and that adjusting their existing evaluation systems to accommodate the requirements of the Act will be expensive. In this respect, one commenter challenged the Secretary's certification that the regulations will not have a significant economic impact, stating that every small entity in the country will have to restructure its current evaluation system to comply with the proposed rule. Another commenter, although opposed to the requirement to evaluate the entire program, conceded that much of the information required under the Act is probably already being collected. One commenter who supported the scope of § 403.191 encouraged the Secretary to coordinate the requirement for evaluation under the Act with evaluations required by regional academic accrediting agencies.

One commenter, citing the burden imposed by the evaluation requirement on recipients, suggested increasing the amount of funds a State may reserve for administration, or increasing funding of the National Center for Research in Vocational Education, "to sample programs for evaluation and comparison relative to those supported with funds awarded under the Act." Another commenter proposed that the regulations be revised to require the State board to conduct the evaluation, with increased technical assistance funding, and to require that only the specific projects funded under the Act be evaluated.

Discussion: The Secretary has carefully considered the comments that the requirement to evaluate a recipient's entire vocational program imposes undue hardship on recipients, and has determined that proposed §§ 403.191 and 403.201 should be changed. The changes in the scope of the evaluation requirement address the concerns of numerous commenters and is in keeping with the Department's heightened efforts to reduce regulatory burden and increase flexibility for educators.

Section 403.191 has been modified to provide that a recipient of funds under title II, part C of the Act must evaluate annually the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60, or a special program listed in § 403.130, unless the State determines under § 403.201 that only a broader evaluation would be effective.

Section 403.201(a)(3) has been changed to require a State board to determine whether a recipient of funds under title II, part C of the Act must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program in order to assess the effectiveness of those projects, services,

and activities. Section 403.201(a)(4) has been added to require a State board to (1) determine whether the entire local vocational education program —or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic or special program; and (2) require a recipient to conduct an evaluation consistent with the State board's determination.

The Secretary wishes to emphasize that there are reasons why a State may decide to require a local evaluation that is broader in scope than the minimum required by § 403.191, as revised. A State could determine that, because its recipients may use funds awarded under the Act jointly with State and local funds or for isolated costs such as equipment, the recipients cannot measure the impact of the Federal funds alone. A State also could determine, based on its particular needs and objectives and those of its recipients, that it is necessary to measure overall program improvement using the standards and measures developed under §§ 403.201 and 403.202 and not simply the impact of the funds awarded under the Act. In any instance in which a State decides that a broader evaluation is required under § 403.201(a)(3), a State is subject to the requirements of § 400.7(b).

Regardless of the determination made by a State as the necessary scope of the evaluation, its recipients of funds under title II, part C of the Act may use funds awarded under title II of the Act and the special programs under title III of the Act, as listed in § 403.130, to conduct the evaluation required in § 403.191 to the extent that the costs are reasonable, necessary, and are related to the purposes for which the funds are awarded. The use of funds for the evaluation must also be consistent with applicable requirements for using funds awarded under the Act, such as the requirement in § 403.196 to use funds awarded under title II to supplement, and not supplant, State and local funds.

Also, the Secretary notes that preliminary information from the National Center for Research in Vocational Education indicates that roughly half of all States already have specific standards and measures for vocational students. Of these States, 56 percent apply the standards and measures to all students in secondary vocational education, and 64 percent apply the standards and measures to all students in postsecondary vocational education.

Thus, the Secretary encourages States to review the evaluation provision and the statewide standards and measures to design an evaluation system that is meaningful, in terms of what the State intends to measure through the local evaluation and the particular needs and objectives within the State. Regardless of the scope of the evaluation, the Secretary encourages a State and its recipients to avoid unnecessary burden by coordinating evaluation systems to eliminate duplication, so long as the statewide measures developed under the Act are addressed. State boards and recipients are also free to coordinate evaluations under § 403.191 with evaluations required by regional accrediting agencies to the degree it is appropriate. To the extent feasible, recipients should use existing data and data collection systems.

The Secretary also notes that the burden of the evaluation may be influenced by the number of indicators used. Sections 403.202(a) (1) and (2) give States the option to adopt only two measures as a part of the statewide system of core standards and measures—one for learning and competency gains, and one from the measures of performance listed in section 115(b)(2) of the Act. A recipient could, therefore, base its evaluation on a limited number of indicators. However, a State or a recipient is free to include additional measures, if it chooses.

The Secretary has also reduced the burden of implementing the evaluation requirement by clarifying in § 403.191 that recipients may rely on representative samples in conducting the evaluation. So long as the samples are representative of the targeted group, there is little potential for the abuses cited by one commenter who opposed sampling. However, the Secretary acknowledges the wide variety of the types of projects assisted under the basic or special programs, the populations participating, and the range in size of recipients. A recipient may choose, for example, to conduct an evaluation based on a representative sample of students, or of students in a particular grade, or of sites assisted under the Act. The Secretary notes that a recipient is not limited to sampling by these examples, and that not all of these samples will result in reliable data for every eligible recipient. Therefore, § 403.191 gives a recipient the flexibility to determine which methods to employ as it is in the best position to know which methods are most feasible, cost effective, and reliable for it.

The Secretary has modified proposed § 403.191, in response to comments, to permit sampling and to require a recipient to evaluate the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60 or a special program listed in § 403.130, unless the State board determines under § 403.201(a)(3) that a broader evaluation is necessary to be effective. However, the Secretary does not agree with some commenters that it would be effective to permit a recipient to phase in the evaluation or the standards and measures. Recipients would have difficulty comparing progress from year to year if the standards and measures are phased in. With respect to other comments recommending that the Secretary reduce the burden of the proposed § 403.191, for instance, by requiring evaluations less frequently than annually, or by transferring the requirement to the State board, section 117(a) of the Act requires a recipient of financial assistance under title II, part C of the Act to conduct an annual evaluation.

As discussed more fully in response to comments on the uses of funds, § 403.191 has been changed to clarify that funds awarded under the Act may be used to conduct the evaluation to the extent reasonable, necessary, and consistent with all applicable requirements for using funds awarded under the Act.

The Secretary notes that the scope of § 403.191 has been modified to address the concern of some commenters that, if funds awarded under the Act could be used to pay for the cost of evaluating a recipient's entire vocational education program, funds available for activities and services to students would be severely depleted.

Changes: Sections 403.191 (a)(1), (c)(2), and (d) have been changed to indicate that a recipient of funds awarded under title II, part C of the Act must evaluate the particular projects, services, and activities receiving assistance from a basic program listed in § 403.60, or a special program listed in § 403.130, unless the State board determines that a broader evaluation is required under revised § 403.201(a)(3). Corresponding changes have been made to § 403.192(b)(1), regarding the requirement for a local improvement plan. Language has also been added to § 403.191(a)(1) to clarify that a recipient may use a representative sample in evaluating its entire vocational education program.

Local evaluation—Scope of requirement (§ 403.191(a)(1))

Comments: Numerous commenters objected to the requirement in § 403.191(a)(1), that a recipient of funds under title II, part C of the Act must evaluate its entire vocational education program. These commenters argued that the requirement is inconsistent with language in section 117(a) of the Act, which provides for an evaluation of the "effectiveness of the program conducted with assistance under this Act," and section 115(a) of the Act, requiring the development of standards and measures to be used to evaluate "all programs assisted under this Act." These commenters stated that the term "program" refers only to the particular projects assisted with funds awarded under the Act. Other commenters stated that, when Congress intends a requirement to apply regardless of the source of funding, Congress knows how to impose the requirement expressly, and that Congress would not have imposed so broad an evaluation requirement without providing the funds to pay for it.

Some commenters challenged the Secretary's rationale for requiring an evaluation of a recipient's entire program: that it is not possible to measure separately the effectiveness of the funds awarded under the Act because they are often intermingled with State and local funds. These commenters argued that, on the contrary, the requirements in section 235 of the Act to fund limited sites or program areas, and to ensure that the programs funded are of such size, scope, and quality as to be effective, ensure that the funds awarded under the Act will make an easily traceable, significant, and therefore measurable impact. Other commenters argued that it was incongruous to require a recipient to evaluate its entire vocational program regardless of the particular projects receiving funds under the Act, in light of the fact that section 235 of the Act requires a recipient to concentrate funds awarded under title II, part C of the Act at a limited number of sites or in a limited number of program areas based on high concentrations of special populations.

Some commenters expressed the view that if the purpose of the local evaluation is to assess the effectiveness of funds awarded under the Act, then only projects assisted with these funds should be evaluated. These commenters asserted that evaluating a recipient's entire vocational education program would yield unreliable data for assessing the impact of the funds awarded under the Act on the recipient's vocational education program.

A few commenters challenged the requirement to evaluate an entire program without regard to which areas of the program receive Federal funding as an instance of unwarranted Federal intrusion into State and local affairs. One commenter stated that, in contrast to section 235 of the Act, the proposed evaluation requirement was not in keeping with the intent of Congress to drive control, flexibility, and accountability to the local level. A few commenters questioned the Secretary's authority to enforce the requirement that a recipient evaluate its entire program and improve areas that are deficient whether or not those areas receive funds awarded under the Act. Another commenter questioned a State's legal authority for requiring a recipient to evaluate non-federally funded areas of its program.

Other commenters supported the proposed rule as the only effective method for tracking program progress. One commenter stated that without a broad evaluation, a recipient would not know where to devote funds to improve its program. Another commenter pointed out that Federal funding comprises only about 10 percent of the cost of vocational education in a State, and that under section 235 of the Act a recipient may shift funds among projects from year to year; therefore, an annual evaluation of the entire program is essential to assess the impact of the Federal funds.

One commenter supported the scope of the evaluation requirement, but recommended that the Secretary include a definition of the word "program," to distinguish the meaning of program in the evaluation provisions from the common use of the term to refer to sets of related courses.

Discussion: In light of the numerous comments citing the burden that proposed § 403.191 would impose on recipients, the scope of the minimum evaluation has been modified to require evaluation of only a recipient's projects, services, and activities receiving assistance under the basic or special programs listed in §§ 403.60 and 403.130, respectively, unless the State board determines under § 403.201(a)(3) that a broader evaluation is necessary to be effective. The Secretary believes that limiting the evaluation to the particular projects, services, and activities receiving assistance under a basic or special program is but one legally sound interpretation of the term "program" as it is used in sections 115(a) and 117(a) of the Act. Accordingly, § 403.201 has been revised to provide States the flexibility and responsibility to expand the scope of the evaluation, as discussed in response to comments on the burden imposed by proposed § 403.191(a)(1).

Changes: Changes have been made to §§ 403.191, 403.192, 403.201, and 403.202, as noted in response to comments on the burden of implementing proposed § 403.191(a)(1).

Comments: One commenter expressed confusion about the scope of the requirement to evaluate an entire program. The commenter appeared to believe that a recipient receiving only funds awarded under title III of the Act would be required to evaluate its entire program.

Discussion: The Secretary wishes to emphasize that only recipients of funds awarded under title II, part C of the Act are subject to the requirement to conduct an evaluation in § 403.191. Section 403.191(a)(1) provides, however, that a recipient of funds under title II, part C of the Act must evaluate the particular projects, services, and activities receiving support under the basic or special programs listed in §§ 403.60 and 403.130, respectively, including those projects that receive only funds awarded under the special programs authorized by title III of the Act.

Changes: None.

Local evaluation—Uses of funds (§ 403.191)

Comments: Commenters expressed confusion as to whether a recipient may use funds awarded under the Act to support the cost of conducting an evaluation under § 403.191. One commenter stated without elaboration that the Act does not permit recipients to use funds awarded under the Act for the evaluation. Other commenters simply requested that the final regulations clarify this matter. One commenter asked that the regulations clarify that funds received under title II, part C of the Act could be used, and that the regulations provide for a waiver of the requirements of § 403.111(d) for giving priority for funding under title II, part C of the Act to a limited number of sites or program areas, based on high concentrations of special populations. Some commenters requested clarification of whether funds awarded under title II, part C of the Act used to pay for the evaluation must be included in the five percent a recipient is permitted to use for administration under section 235(c)(4) of the Act.

Discussion: A recipient of funds under title II, part C of the Act may use funds awarded under title II of the Act and the special programs under title III of the

Act, as listed in § 403.130, to conduct the evaluation required in § 403.191, to the extent that the costs are reasonable, necessary, and are related to the purpose for which the funds are awarded, such as sex equity, or consumer and homemaking education. The use of funds for the evaluation must also be consistent with applicable requirements for using funds awarded under the Act, such as the requirement in § 403.196 to use funds awarded under title II to supplement, and not to supplant, State and local funds. The Department's practice has been to exclude the costs of evaluations from the costs of administration. If a recipient uses funds awarded under title II, part C of the Act for this purpose, the recipient is not required to count those costs as part of the five percent reserved for administration under section 235(c)(4) of the Act. The requirement in section 235(b) of the Act, to give priority, applies to a local recipient's distribution of funds to sites or program areas. This provision does not prohibit a recipient from reserving a necessary and reasonable amount of funds for evaluation or administration before distributing funds to sites or program areas. Therefore, it is not necessary to waive section 235(b) of the Act in this instance.

Changes: Section 403.191(e) has been added to clarify that a recipient may use funds awarded under the Act to support the cost of the evaluation required in § 403.191. Use of funds for evaluation must be reasonable, necessary, related to the purpose for which the funds are awarded, and consistent with applicable requirements for the use of funds awarded under the Act.

Local evaluation—Application of statewide standards and measures (§ 403.191(a)(1))

Comments: A few commenters objected to the imposition of standards and measures developed under the Act upon projects funded under other authorities, such as JTPA or JOBS; these commenters noted that these projects are already subject to evaluation requirements that do not coincide with the requirements of the Act. Other commenters argued that the evaluation required in sections 115 and 117 of the Act was designed only to apply to the particular Federal interest in serving members of special populations, and, thus, was not suited to evaluating projects funded under other authorities.

Other commenters noted that vocational education projects may address different needs and serve different populations, and expressed the view that, if all of the components of a recipient's program were subject to the statewide system of standards and measures required by section 115(a) of the Act, the results would be misleading and result in inaccurate identification of areas needing improvement. Some commenters concluded that States, in attempting to accommodate the variety within programs, would adopt the most minimal standards rather than focusing on high quality standards designed to further the goals of the Act. One commenter stated that the evaluation would not lead to consistent, reliable data for the Federal government because of the programmatic differences between States.

Discussion: With respect to applicability of the statewide standards and measures to projects that must be evaluated under § 403.191 and that also receive assistance under JOBS and JTPA, § 403.202(b) provides that a State board, in developing the statewide system of standards and measures, should consider, and provide for consistency with, the standards and measures developed under JOBS and JTPA, to the extent appropriate.

Although the scope of the evaluation has been modified, the Secretary does not agree with the comment that the evaluation and the standards and measures in §§ 403.191 and 403.202 are geared only towards "Federal interests" in serving special populations. The Secretary notes that, as clarified in response to comments on §§ 403.111(a)(3) and 403.111(b), once a recipient has ensured that the needs of special populations are met and has given priority for funding to sites or program areas with the highest concentrations of special populations, the recipient may serve the general population as well. Moreover, the standards and measures from which a State must choose in § 403.202 consist of measures of general applicability, such as completion of secondary school, and job skill attainment.

The Secretary also notes that, to the extent a State board determines under § 403.201(a)(3) that the evaluation should include projects not receiving assistance under the Act, the regulations provide ample flexibility for the State board to design standards and measures that take into account the varying needs and objectives of local programs. Section 403.201 provides that a State board must consult with the committee of practitioners, which includes representatives of recipients, in developing the standards and measures. Section 403.202(a)(3) provides that the standards and measures must include incentives and adjustments for special populations. The measures listed in § 403.202 include measures appropriate for different instructional levels and needs. Section 403.191(b)(1) also provides that recipients may modify the standards and measures according to a recipient's economic, geographic, or demographic circumstances, and the populations to be served.

Finally, the Secretary does not agree with some commenters that the purpose of the evaluation requirement is to provide uniform data about local vocational education programs to the Secretary. The evaluation is primarily intended to assist a recipient in identifying and directing resources to its deficient areas. The Act does not contemplate requiring a recipient to submit the results of the evaluation to the Secretary.

Changes: None.

Local evaluation—Modification of standards and measures (§ 403.191(b))

Comments: Some commenters expressed apprehension that a recipient, in order to boost its evaluation results, would modify standards and measures to result in lower expectations for special populations. These commenters proposed that § 403.191(b) be changed to provide that a recipient may supplement, but not weaken, the State standards and measures. The commenters also suggested that § 403.191(b) be revised to clarify that a recipient may not modify the standards and measures without the express approval of the State board.

Discussion: Section 403.191(b) provides that a recipient may modify the statewide standards and measures, based on certain factors provided in section 115(a) of the Act, and in conformance with the assessment criteria in the State plan. The Secretary believes this provision makes it clear that the State board sets the boundaries for local modification of the standards and measures and ensures that the effectiveness of its system of standards and measures is not impaired through local modification.

Changes: None.

Local evaluation—Equal access to vocational education program for members of special populations (§ 403.191(c))

Comments: Some commenters objected to § 403.191(c), which requires recipients, with the full participation of representatives of special populations, to identify and adopt strategies to overcome barriers resulting in lower rates of access to, or success in, vocational education for special populations. These commenters argued that § 403.191(c) does not accurately reflect section 117(c) of the Act, which provides that a recipient under title II,

part C must conduct this evaluation, with "the full participation of representatives of individuals who are members of special populations." The commenters wanted § 403.191(c) changed to repeat the statutory language, and to clarify that section 117(c) of the Act requires the participation of outside representatives of these populations, such as parents, advocates, and members of special populations themselves, not program administrators.

Discussion: The Secretary believes that § 403.191(c) already provides for the participation of the individuals listed by the commenters—representatives of special populations, including parents, advocates, and members of special populations themselves—and, therefore, does not believe that a change to the regulations is necessary. With respect to excluding categories of individuals such as program administrators, the Secretary does not believe it is appropriate to set limits in § 403.191(c) on who may best represent the interests of members of special populations.

Changes: None.

Local evaluation—Progress in providing students with strong experience in, and understanding of, all aspects of the industry (§ 403.191(d))

Comments: Some commenters expressed concern that a recipient would narrowly construe the requirement in § 403.191(d), which provides that a recipient must include in its evaluation an assessment of the progress of the recipient's vocational education program in providing students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. These commenters proposed that the regulations place emphasis on the need for strong experience in, and understanding of, all aspects of the industries, and the need to interpret the phrase "all aspects of the industry" broadly.

Discussion: Section 403.191(d) expressly provides that a recipient of funds under title II, part C of the Act, as part of the annual evaluation required by § 403.191(a), must evaluate its progress in providing vocational education students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. Therefore, the Secretary does not believe that the regulations should contain additional emphasis on these elements.

Changes: None.

Local evaluation and standards and measures—Application to members of special populations (§§ 403.191 and 403.202)

Comments: One commenter requested that § 403.191 be changed to clarify that a recipient is to use the standards and measures to assess its program, not to assess individual students. The commenter wanted § 403.191 to emphasize that members of special populations may not be barred from participation in vocational programs because a recipient believes their participation will result in poor evaluation results. Additionally, the commenter felt that the Secretary should stress that "creaming"—only permitting the most successful students to participate—would not be tolerated.

Discussion: The Secretary agrees with the commenter that a recipient may not bar special populations from enrolling in its vocational program. However, the regulations have not been modified as the commenter requested because § 403.191(c) requires a recipient, in conducting the evaluation, to identify and adopt strategies to overcome barriers to access and success for members of special populations. In addition, § 403.111(c)(3) requires a recipient to provide for the equitable participation of members of special populations in the vocational program. Moreover, the State board makes an assurance, under § 403.32(a)(18), to ensure that members of special populations will be granted equal access to the full range of vocational education as that accorded to the general population. The Secretary considers these provisions significant protection against the possible abuses the commenter cited and sees no need to reiterate these provisions in § 403.191 or § 403.201.

Changes: None.

Local improvement plans—Funds available for improvement (§ 403.192)

Comments: One commenter asked what funds could be used to improve a deficient project at a site not receiving funds awarded under the Act; the commenter noted that, under section 235 of the Act, a recipient may fund only a limited number of sites or program areas, based on high concentrations of special populations.

Discussion: The scope of the evaluation under § 403.191 has been changed to include only the particular projects, services, and activities assisted under programs listed in §§ 403.60 or 403.130, unless the State board determines that a broader evaluation is required. The Secretary has made corresponding changes to the requirements for a local improvement plan, in § 403.192(b)(1). However, the Secretary points out that regardless of the scope of the evaluation, if a project covered by the evaluation is identified as deficient, funds awarded under Title II, Part C of the Act may be used to improve a deficient project at a site only if all of the requirements of the Act, including the requirement to give priority under section 235(b) of the Act, are met.

Changes: Section 403.192(b)(1) has been changed to provide that a recipient must include in the local improvement plan strategies designed to achieve progress in improving the recipient's projects, services, and activities receiving assistance under the programs listed in §§ 403.60 or 403.130.

Requirements for program improvement (§ 403.192)

Comments: A commenter noted that the requirement in § 403.192(b) for an eligible recipient to consult with teachers, parents, and students concerned with or affected by the program in developing a program improvement plan was burdensome. The commenter believed that carrying out this provision would require personnel, time, and money that could be better devoted to student services.

Discussion: Section 403.192(b) reflects the unambiguous requirement of section 117(b) of the Act. Moreover, it is consistent with the intent of the Act to have consultation on issues affecting program improvement.

Changes: None.

State and local improvement plan—Sanctions if improvement is not shown (§§ 403.192 and 403.204)

Comments: One commenter noted that the proposed regulations provided no incentive for a recipient to meet or exceed the statewide standards and measures because §§ 403.192 and 403.204, related to improvement plans, do not contain the threat of loss of funding if improvement is not demonstrated. This commenter recommended including a provision in the regulations to withdraw funding from a recipient if the recipient does not demonstrate sufficient progress.

Discussion: Sections 403.192 and 403.204 implement sections 117(b) and (c) of the Act, which do not provide for loss of funding if a recipient fails to show progress under a State and local improvement plan. Accordingly, the Secretary does not believe it is appropriate to cut off funding in these circumstances.

Changes: None.

Information requirements regarding special populations (§ 403.193)

Comments: One commenter believed that § 403.193 is unclear because it suggests that funds awarded under the Act might be used to assist special populations in other, non-vocational

aspects of schooling. The commenter argued that this would deplete funds for vocational education for all students.

Discussion: The Secretary believes that § 403.193 is quite clear from its context that it requires information be provided only about vocational education opportunities and activities available to members of special populations.

Changes: None.

Comments: Two commenters questioned whether § 403.193 requires eligible recipients to provide notification to parents of students over 18 years and recommended that § 403.193 be clarified.

Discussion: Section 403.193(b) requires any LEA, area vocational education school, or intermediate educational agency that receives funds under title II of the Act to provide the information described in § 403.193(a)(1) to students who are members of special populations and their parents at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade, regardless of the age of the student. Likewise, § 403.193(c) requires any eligible institution that receives funds under title II of the Act to provide the information described in § 403.193(a)(1) to each individual who requests information concerning, or seeks admission to, vocational education programs offered by the institution regardless of the age of the individual. Section 118(b) of the Act imposes no greater or lesser responsibility on an eligible recipient with respect to students that are over 18 years of age.

Changes: None.

Comments: Some commenters requested that § 403.193(a)(1)(i) clarify that an LEA that receives funds under title II of the Act must provide special populations students and their parents with information concerning opportunities available in vocational education in programs provided by the LEA and any area vocational education school or intermediate educational agency that serves students from the LEA.

Discussion: The Secretary believes that § 403.193(a)(1)(i) is clear that an LEA must provide information concerning all opportunities in vocational education available to a special populations student. This includes information concerning all programs open to the student, whether they are conducted directly by the LEA, an area vocational education school, or intermediate educational agency that serves students from the LEA, or directly by the State, as is sometimes the case.

Changes: None.

Comments: Some commenters requested that § 403.193(c)(2) be amended to require eligible institutions to assist in the preparation of applications related to admission when—not if — appropriate. The commenters believed that the use of "when" conveys a more affirmative sense that this assistance will be appropriate.

Discussion: The Secretary does not agree that § 403.193(c)(2) implies that this assistance will or will not be appropriate. Rather, consistent with Department style, "if" is used to refer to a condition or situation. The Department reserves the use of "when" to refer to time.

Changes: None.

Cost of providing information and supplementary services to members of special populations (§ 403.193(e))

Comments: Numerous commenters supported § 403.193(e), which provides that an eligible recipient does not have to use non-Federal funds to pay the costs of services and activities required by that section and by §§ 403.111(a)(2)(i) and (c)(3) and 403.190(b), unless the requirement is imposed by other applicable laws. Some commenters indicated that, while they supported the spirit of the equal access provision, they did not believe that equal access is a financial obligation for a recipient to pay any and all costs related to an unlimited assurance.

Other commenters requested that the provisions limiting services to members of special populations to the extent of available Federal funds be deleted because they believed that this provision was contrary to a clear statutory condition for funding. Another commenter recommended that an eligible recipient be required to spend funds awarded under the Act to meet the requirements of §§ 403.190(b) and 403.193, and be encouraged to make such expenditures from State and local funds as the eligible recipient may determine is necessary to meet the requirements of the Act.

Discussion: The Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. Accordingly, the provisions of both §§ 403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. Moreover, if an eligible recipient is already providing the information required in § 403.193 with non-Federal resources, it need not, of course, use Perkins Act funds to duplicate those expenditures.

Changes: None.

Comments: Many commenters noted that, even though § 403.193(e) indicates that recipients do not have to use non-Federal funds to pay for supplementary services unless the requirement is imposed by other laws, a recipient would have to spend State and local funds to provide supplementary services to all special populations students under § 403.190(b), pursuant to 34 CFR part 100, appendix B, which requires all recipients of Federal vocational education funds to spend non-Federal funds to provide equal access. These commenters indicated that they thought the proposed regulations construed equal access required by section 118(a) of the Act to be synonymous with pre-existing civil rights requirements, which independently require equal access to vocational education programs. These commenters expressed confusion over the interplay between § 403.193(e), and the requirements imposed on eligible recipients in §§ 403.111(a)(2)(i) and (c)(3), and 403.190(b). The commenters requested that the regulations clarify the interplay between these provisions and provide numerous examples.

Discussion: The "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs," which are contained in appendix B of 34 CFR part 100, implement the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. While these provisions provide protection for some of the special populations under the Perkins Act, for example, individuals with disabilities and limited English proficient students, and require equal access, including the provision of supplementary services, they do not apply to other special populations under the Perkins Act, such as educationally and economically disadvantaged individuals. As § 400.9(b) makes clear, the Act does not in any way limit the rights of members of special populations accorded by other Federal laws, for example, title VI of the Civil Rights Act, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

However, the regulations implementing the Perkins Act do not

construe the terminology of the Perkins Act to be synonymous with the terms used in civil rights provisions, such as title VI of the Civil Rights Act. Title VI of the Civil Rights Act does not apply to all of the groups included in the definition of "special populations," as that term is used in the Perkins Act. Similarly, other Federal statutes, such as the IDEA and section 504 of the Rehabilitation Act of 1973, require services for disabled students but not other special populations as that term is used in the Perkins Act. Therefore, with respect to these populations, such as disadvantaged individuals, an eligible recipient is required to provide only the services specifically required by the Perkins Act. As noted in § 403.193(e), an eligible recipient is not required to use non-Federal funds to pay the cost of services and activities required by §§ 403.193, 403.111(a)(2)(i) and (c)(3), and 403.190(b), unless that requirement is imposed by other laws, such as title VI of the Civil Rights Act, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

Changes: None.

Comparability (§ 403.194 and appendix B to part 403)

Comments: Several commenters suggested that it would be helpful to have models of standard assurance statements to ensure compliance with the requirements in § 403.194. Some commenters indicated that the assurance models should ensure compliance that reflects "State support variation."

Discussion: There are likely to be many possible standard assurance forms that could be used by various States and local educational agencies, reflecting the flexibility in the regulations on meeting comparability requirements. To provide models may discourage flexibility. If the Department becomes aware of particularly useful model forms that would have broad applicability, it will disseminate them. With regard to the comment as it pertains to variations in State support, it does not appear likely that State support will vary within a school district, so it is not clear to what potential problem the commenters are referring. Furthermore, the Secretary provides, in paragraph (b) of Example 2 in appendix B to part 403, for a 10 percent variance in meeting comparability requirements and for exclusions from the comparability calculations for special State programs such as phase-in programs. All of these provisions allow for "State support variation."

Changes: None.

Comments: One commenter supported the proposed regulatory language and discouraged any more stringent criteria, such as requiring comparisons at the vocational education program level to determine comparability, as being too burdensome. Another commenter indicated that comparability should be limited to State and local educational agencies comparing services in vocational programs. To include more, this commenter believed, brings in too many variables and factors that are not controlled by the State or local educational agencies, such as the local property rate and teacher contracts. Examples should focus on comparing vocational education programs and services.

Discussion: Section 113(b)(19) of the Act requires that State and local funds be used in an LEA's schools that are receiving funds under the Act to provide "services, which taken as a whole, are at least comparable" to services provided in that LEA's schools that are not receiving funds under the Act. Thus, since the statute provides that services in general taken as a whole be the subject of the comparison, the statutory language does not support an interpretation that only vocational education services were intended to be included in comparability determinations.

Changes: None.

Comments: One commenter indicated that the "comparability expenditures" included in the examples in appendix B to part 403 (formerly in proposed § 403.194), were inconsistent with the "comparability services" required by the section 113(b)(19) of the Act. This commenter concluded that all sites controlled by an eligible recipient would be forced to have the same programs covering the same subject areas, which would be very costly. Often, this commenter felt, only one site offers a particular service, and students from all sites are transported to the one site. This commenter believed that Congress did not intend that all sites have identical programs, but once sites were selected, the recipient would not reduce its contribution of local funds to these sites and replace them with Federal funds.

Discussion: The Secretary believes that the examples in appendix B to part 403 are consistent with the Act, and that the examples of "services" are appropriate. The Secretary does not believe that § 403.194(a) requires having the same programs in the same subject areas. The examples in appendix B to part 403 provide considerable flexibility especially by permitting a 10 percent variance. The Secretary also disagrees that the intent of Congress was to ensure that an LEA does not reduce its contribution of State and local funds and replace them with Federal funds. While those purposes are related to the comparability requirement, they are more closely associated with "maintenance of effort" and "supplement, not supplant" provisions set forth in sections 502 and 516 of the Act.

Changes: None.

Comments: One commenter indicated it is unclear if there is a matching requirement for LEAs that have more than one school or site.

Discussion: There are no longer matching requirements that apply to LEAs under the Act. Comparability requirements are not matching requirements, but rather they require that an LEA provide comparable resources to its schools if the LEA has more than one school or site.

Changes: None.

Comments: Several commenters suggested clarifying the application of the comparability requirement to a consortium formed pursuant to section 321(b)(1) of the Act, especially if the consortium is composed of several LEAs with one high school each. One commenter suggested that an exemption for an LEA with one school apply; otherwise, the commenter said, high schools in different districts would be compared, which was not intended by the Act. Another commenter suggested that the provision be clarified to indicate that it pertains only to sites within a given LEA, and not to all sites of all the LEAs within a consortium. One commenter also suggested that an example be included that involves an area vocational district that is composed of multiple LEAs.

Discussion: The Secretary agrees with the commenters that section 113(b)(19) of the Act was intended to apply only to sites within a given LEA, and not to all sites of all LEAs within a consortium. Within each LEA in a consortium, however, comparability requirements would have to be met, but the comparability requirements do not apply to an LEA with a single high school or secondary site.

The commenter did not provide information about what was meant by the term "vocational district." However, if a "vocational district" meets the definition of an LEA in § 400.4(b), it would be subject to the comparability requirements in the same manner as other LEAs. LEAs within a "vocational district" that is not itself an LEA would be subject to the comparability requirements in the same manner as LEAs within a consortium.

Changes: A change has been made to § 403.194(b) to clarify how the comparability requirements affect consortia.

Comments: One commenter indicated that, since comparability is a new requirement, an LEA needs to be afforded some period of time to come into compliance, such as 30 days from the date that noncompliance is determined to submit a plan for meeting the requirement to the State agency. The commenter also felt that the State should have 30 days to approve or disapprove the plan, and the LEA should have 12 months from the date of the determination of noncompliance to correct the violation. The commenter also suggested that assigning a dollar value to the amount to be withheld or repaid is needed.

Discussion: If an LEA initially demonstrates its compliance with the comparability requirements, but fails to maintain compliance, the Secretary agrees that the LEA should be afforded a reasonable time to restore its compliance with the comparability requirements. Under § 403.200, the State has the responsibility to monitor and determine what steps need to be taken to ensure compliance. The Secretary wants to preserve reasonable flexibility and not be prescriptive in setting deadlines for compliance, and observes that 30 days to achieve compliance is reasonable, but that 12 months or a full year for an LEA to be out of compliance appears to be unreasonable. With regard to the dollar amount to be withheld or repaid if there is lack of compliance, section 113(b)(19) of the Act provides that a State must provide an assurance that funds are not being used in the schools of an LEA that is out of compliance with the requirement. Section 403.200(b) sets forth provisions for determining the amount the State must withhold or require to be repaid.

Changes: None.

Comments: One commenter indicated that comparability should not apply to all funded programs. The commenter felt, for example, that it would be unreasonable to require that all secondary schools in an LEA be comparable with one another before the LEA could conduct a curriculum integration project using State leadership funds.

Discussion: The Secretary believes that the comparability requirement applies to an LEA's particular school or schools that receive funds under the Act awarded under any program subject to the State plan, consistent with the State's assurance required by section 113(b)(19) of the Act. Thus, for example, an LEA conducting a curriculum leadership project with State leadership funds awarded under title II, part A of the Act must meet the comparability requirement to be eligible for those funds. However, the State leadership funds under the Act awarded to the LEA would not affect the comparability determination itself, since only State and local funding is used in the comparison. Furthermore, as noted above, the comparability requirements do not apply to all State and locally funded programs; certain programs listed in § 403.194 are exempt from comparability determinations.

Changes: None.

Comments: Several commenters requested that the examples in appendix B to part 403 (formerly in proposed § 403.194) be deleted or that they be rewritten in the regulations or issued in separate guidance. The commenters stated that Example 1 in appendix B will result in only "paper compliance" as the commenters believe a similar regulatory provision does in chapter 1 of the Elementary and Secondary Education Act of 1965, and that Example 2 in appendix B should not be allowed to substitute for all of the "requirements" in Example 1 in appendix B. Finally, the commenters indicated that, even if the examples are adequate for chapter 1, they are not adequate to measure the wide differences among vocational schools and programs that determine whether "programs" are in fact comparable.

Discussion: The examples are based on examples in the regulations for chapter 1 of the Elementary and Secondary Act of 1965, which has a similar comparability requirement. From all indications that the Secretary has, these examples in chapter 1 regulations have been effective in providing adequate guidance to grantees and in helping to ensure that the statutory provision is implemented properly. The commenters seem to base some of their suggestions on their belief that each example establishes requirements. The examples do not create requirements; they are merely illustrative. The suggested relationship of Example 1 in appendix B to Example 2 in appendix B would, therefore, be inappropriate.

With regard to the comment concerning the inadequacy of "Chapter 1-type" comparability measures to measure the differences among vocational education schools and programs, the Secretary believes that the regulations provide for appropriate measures. Congress enacted a comparability provision in the Act that is similar to the chapter 1 provision. The schools involved in chapter 1 are also diverse with regard to programs and services, and the comparability provisions have worked well.

Changes: None.

Supplanting (§ 403.196)

Comments: Several commenters supported § 403.196 and thought that paragraph (c) was particularly helpful. However, several other commenters believed that § 403.196(c) is confusing and contrary to the statutory language. These commenters asked for clarification and suggested that paragraph (c) negated paragraph (b) of § 403.196. One commenter argued that the purpose of the statutory non-supplant provision was to permit funds awarded under the Act to be used to pay for costs of vocational education services required for ensuring equal access to children with disabilities under the IDEA and to adults under the Rehabilitation Act of 1973, and to permit States and other recipients for the first time to expend available Federal funds for individuals with disabilities, regardless of whether the services to these individuals had been provided with non-Federal funds in prior years.

Discussion: Section 403.196(c) clarifies that the limited purpose of the exception to the supplanting prohibition is to allow expenditures that would otherwise constitute supplanting only in instances where the expenditures at issue would be used to increase the amount of funds that would otherwise be available to pay the costs of an IEP or of meeting the requirements of section 504 of the Rehabilitation Act of 1973 for either children with disabilities or adults with respect to their participation in vocational education programs. In the absence of the exception to the supplanting prohibition in section 516(a)(1)(B) of the Act, which is implemented in § 403.196(b), any use of funds awarded under title II of the Act to pay the costs of an IEP or of complying with section 504 of the Rehabilitation Act of 1973 would present a classic case of supplanting in violation of the supplanting prohibition in section 516(a) of the Act because the use of State and local funds for these purposes is required in the absence of the Federal vocational education funds. This would be true whether or not a State or other recipient had expended Federal funds for these services to individuals with disabilities in prior years. However, the Secretary believes that it would be inconsistent with the obvious purpose of making an exception to the supplanting prohibition, which is to make more funds available to serve individuals with disabilities, to permit a State or recipient to reduce aggregate expenditures for these purposes.

Changes: None.

Use of equipment (§ 403.197)

Comments: One commenter believed that § 403.197(a) should be interpreted to mean that only disadvantaged students may use equipment in a program during a particular class period. The commenter suggested that the regulations be revised to make clear that this narrow interpretation is correct.

Discussion: The Secretary disagrees that § 403.197 can be interpreted to limit the use of equipment to disadvantaged students. Equipment purchased with funds under § 403.112, 403.113, or 403.116 is available to all students in projects, services, or activities under § 403.111 or to other students as described in § 403.197.

Changes: None.

Comments: One commenter expressed concern that equipment purchases could be made for non-vocational needs.

Discussion: The Secretary finds that the procedural requirements set forth in § 403.197 are adequate to prevent the misuse of funds envisioned by the commenter.

Changes: None.

State responsibilities for ensuring comparability (§ 403.200)

Comments: With regard to the responsibilities of the State, several commenters suggested that the procedures for annually demonstrating comparability in § 403.194(c)(1) be developed either by the State educational agency (SEA) or by the LEA with SEA guidance and approval. Additionally, those commenters felt that § 403.194 would improperly permit an LEA to continue to receive funds (minus a "penalty") even though it continues to operate a program in violation of the comparability requirements, and, therefore, the section should be changed to indicate that an LEA that has not taken steps to comply with comparability requirements should receive no funds.

Discussion: Under § 403.200, the State board must monitor each LEA's compliance with the comparability requirements. Among the reasonable actions it could take under that authority is reviewing an LEA's procedures annually to determine if they comply with the statute and regulations, and providing guidance on those procedures if the State board feels that it is appropriate. The Secretary, however, does not believe it is necessary to mandate the steps or methods in a State's monitoring process.

With regard to the remedies for lack of compliance with the comparability requirements. §§ 403.194 and 403.200 make it clear that an LEA may receive an award under the State plan only if it meets the comparability requirements. These sections of the regulations indicate that an LEA may demonstrate compliance with the comparability requirements by filing an appropriate assurance.

The Secretary believes that the commenters have made an appropriate suggestion with regard to § 403.200, concerning the withholding of funds. The provision has been modified to indicate that, if a violation is discovered after a grant award is made but during the time the program is in operation, a State could withhold all or a part of an LEA's grant, depending on the severity of the problem. In addition, an LEA that continues to be out of compliance in subsequent years would not be eligible to receive a grant award in those years. The regulatory change addresses the commenters' concern and also provides the State with flexibility in designing appropriate remedies. The appropriate remedy for a violation found after the period of availability of funds awarded is a refund to the State board of the amount or percentage by which the LEA failed to achieve comparability. The commenters incorrectly categorize any of these measures as a "penalty."

Change: A new paragraph (a) has been added to § 403.200 and § 403.200(c) has been changed to clarify the responsibilities of the State board and an LEA.

Statewide system of standards and measures (§§ 403.201 and 403.202)

Comments: A few commenters expressed satisfaction with § 403.201(a)(1), which does not require the State board to develop separate standards and measures for secondary and postsecondary levels. One commenter believed that a State should decide whether separate standards are needed, but that a State should not be permitted to set different measures for secondary and postsecondary systems. This commenter believed that one system of measures is necessary to facilitate greater articulation between secondary and postsecondary institutions. Another commenter expressed the view that the regulation should be changed to make it clear that a State cannot develop separate systems of standards and measures for secondary, postsecondary, and adult education, but did not explain why.

Discussion: The Act neither requires nor prohibits separate standards and measures for secondary and postsecondary levels. The Secretary believes that a State board, in consultation with the committee of practitioners, is in a better position than the Secretary to determine whether separate standards and measures are appropriate.

Changes: None.

Comments: One commenter noted that, while section 115(a) of the Act requires a State board to develop standards and measures for secondary and postsecondary vocational education programs, § 403.201(a)(1) provides that the State board must develop standards and measures of performance for secondary, postsecondary, and adult education programs. The commenter argued that the inclusion of adult education programs was contrary to what the Act requires and should be deleted.

Discussion: Section 403.201(a)(1) is consistent with the requirements of section 115(a) of the Act, which provide that the standards and measures must apply to "all programs assisted under this Act." Funds awarded under section 232 of the Act provide assistance to postsecondary and adult education programs.

Changes: None.

Comments: Some commenters stated that, with respect to the statewide system of standards and measures, § 403.202(a)(1) should clarify that the measure of student progress in the achievement of basic and more advanced academic skills is not limited to the achievement of academic skills related to the vocational program. The commenters also requested that the regulations require that the standards and measures address achievement of basic and academic skills in each of the following areas: math, reading, writing, science, and social studies. One commenter requested that the regulations define basic and advanced academic skills to include fundamental reading, math, writing, speaking, listening, and decision-making skills, while advanced skills would include higher level math and science skills. Other commenters suggested incorporating the definition of "more advanced skills" from Chapter 1.

Discussion: The Secretary does not agree that the evaluation must include an assessment of a student's achievement of academic skills that are unrelated to the vocational program. The evaluation must focus on a project's progress towards the goal of providing an integrated program of vocational and academic education. With respect to whether the standards and measures must address the achievement of basic and academic skills in math, reading, writing, science, and social studies, the Secretary believes that the State board should have the flexibility to determine whether all or some of these subjects

must be addressed. The Secretary does not believe that the meaning of basic and more advanced academic skills should be prescribed by regulation. The definition offered by one commenter is an acceptable interpretation; however, a State board may devise a different, but a equally acceptable definition, depending on the needs and objectives of that State's program.

Changes: None.

Comments: Some commenters requested clarification that the measures of competency gains used in § 403.202(a)(1) refers to a student's achievement of a set of specific skills and knowledge.

Discussion: The Secretary believes that the meaning of "competency gains" is straightforward and sees no need to add a definition of the term.

Changes: None.

Comments: Some commenters pointed out that § 403.202(a)(2) requires that the statewide system of standards and measures include "one or more" of a list of measures, while section 115(b)(2) of the Act states that the standards and measures must include "one or more measures of performance, which shall include only * * *." The commenters stated that this was a significant change in meaning, but did not elaborate.

Discussion: The Secretary believes a State board should have the flexibility to add other measures of performance that are related to the goals and purposes of the Act, so long as the State board selects at least one measure from the list in § 403.202(a)(2).

Changes: None.

Comments: One commenter pointed out that § 403.201(a)(2)(i), which implements section 115(a) of the Act, requires a State to develop a system of standards and measures by September 25, 1992; however, section 115(a) of the Act provides that the State must "develop and implement" the system of standards and measures by September 25, 1992. The commenter proposed that § 403.201(a)(2)(i) be amended to reflect the requirements of section 115(a) of the Act, and include the requirement to implement the standards.

Discussion: The Secretary agrees that § 403.201(a)(2)(i) should be modified to clarify that a Statewide system of standards and measures must be developed and implemented by September 25, 1992. The omission of the requirement to "implement" the standards and measures was inadvertent.

Changes: Section 403.201(a)(2)(i) has been changed to include the requirement that a State must develop and "implement" the system of standards and measures by September 25, 1992.

Comments: One commenter asked that the "incentives or adjustments" provision in § 403.202(a)(3) be interpreted by regulation to mean the level of assistance, financial and otherwise, and not as an authority to lower standards and measures for special populations.

Discussion: Section 115(b)(3) of the Act, which is implemented in § 403.202(a)(3), requires a State to include in its system of standards and measures incentives or adjustments that are designed to encourage service to targeted groups or special populations.

Neither the statute nor its legislative history defines the term "incentives or adjustments." Consequently, the Secretary believes a State should be afforded broad authority to develop incentives or adjustments appropriate to its needs and circumstances. However, this might include establishing different standards and measures for these groups or populations.

Changes: None.

Comments: One commenter expressed the view that the provision in § 403.202(b) that a State board, in developing the system of standards and measures, must consider, and provide for consistency with, standards and measures developed under JTPA and JOBS, to the extent appropriate, exceeds the intent of the Act. The commenter offered no elaboration. Some commenters objected to the provision, on the ground that the Act requires the State board only to consider the standards and measures of JTPA and JOBS, not to attempt consistency with them. These commenters pointed out that JTPA and JOBS have different goals and objectives than the Act.

Discussion: The Secretary does not agree that requiring a State board to take into consideration, and to provide for consistency with, the standards and measures under JTPA and JOBS, to the extent appropriate, exceeds the intent of section 115(c) of the Act. Section 403.202(b) does not require standards identical to JOBS and JTPA. Rather, § 403.202(b) reflects the concern underlying section 115(c) of the Act, that the State board should not duplicate the effort of other Federal agencies in developing standards and measures under JTPA and JOBS, and that, to the extent the State board determines it is appropriate, the standards and measures developed under the Act will be consistent with standards and measures developed under JTPA and JOBS.

Changes: None.

Comments: Some commenters expressed the view that the regulations should establish a connection between § 403.202, which requires a State board to develop standards and measures, and § 403.191 (c) and (d), which requires a recipient, as part of its annual evaluation, to identify and adopt strategies to overcome barriers resulting in lower rates of access to, or success in, vocational education for members of special populations; to evaluate the progress of members of special populations; and to evaluate the recipient's progress in providing students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. The commenters felt that the regulations should be redrafted to require a State board to develop standards and measures that address the requirements of § 403.191 (c) and (d).

Discussion: The requirements in § 403.191 (c) and (d) implement sections 117(a) (1) and (2) of the Act, which provide that it is the recipient's responsibility, not the State board's, to include these factors in its evaluation in addition to using the State board's system of standards and measures. Section 115(a) of the Act requires only that the State board include in its system two measures, and § 403.202 preserves that flexibility for the State board.

Changes: None.

Comments: Some commenters stated that the measures developed under § 403.202 must be comprehensive and broad, while the standards could be set low, initially, and raised as progress is made. These commenters also expressed the view that the regulations should emphasize the requirement that measures and standards must be accurate, valid and unbiased.

Discussion: The Secretary agrees that measures developed under §§ 403.201 and 403.202 should be comprehensive, but does not believe the regulations need to contain additional emphasis on this point. Nor does the Secretary believe it is necessary to revise the regulations to provide that standards and measures must be accurate, valid, and unbiased. These requirements are implicit in the provision that requires a State to develop a system of standards and measures.

Changes: None.

Comments: One commenter requested that the Secretary clarify what would be an acceptable level of gain under the standards set by the State board pursuant to § 403.202. The commenter also requested guidance on whether a recipient must use pre- and post-testing in assessing progress under the standards and measures, and whether a recipient could simply test random

samples of students rather than testing every student. The commenter expressed uncertainty about including in the evaluation students enrolled in consumer and homemaking education, technology education, and career exploration programs because these programs are not occupational in nature, and students who failed to complete a full program of vocational education.

Discussion: Section 115(a) of the Act clearly reserves to the State board the flexibility to determine appropriate standards under the statewide system of standards and measures. The Secretary believes that the advisability of using pre- and post-testing, and which students to include in the testing, is likewise best reserved to the judgment of the State board and its recipients. Regardless of whether a recipient uses pre- and post-testing, a recipient may rely on representative samples in conducting the evaluation required in § 403.191(a)(1). With respect to what must be included in the evaluation, § 403.191 has been changed to provide that a recipient of funds under title II, part C of the Act must evaluate only its projects, services, and activities assisted under the basic or special programs listed in §§ 403.60 and 403.130, unless the State board determines that, pursuant to revised § 403.201(a)(3), a broader evaluation is required.

Changes: None.

Comments: One commenter expressed the view that the relevance of programs to the labor market should be a central element of the evaluation of a recipient's program. The commenter believed that the evaluation provision demonstrated an excessive concern with programmatic elements rather than with employer satisfaction.

Discussion: The Secretary notes that § 403.202(a)(2)(ii) provides that a State board may choose to measure "[j]ob or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared * * *." In addition, § 403.202(a)(2)(iv) provides that a State board may include, as a measure, placement in employment. Representatives of business also advise the State board on the selection of the members of the committee of practitioners, with whom the State board consults in developing the standards and measures. The Secretary believes that these provisions are adequate to ensure that employer satisfaction is an element in the local evaluation, to the extent the State board deems appropriate.

Changes: None.

State and local improvement plan (§ 403.204(a))

Comments: Some commenters proposed that § 403.204 define "sufficient progress" in meeting the standards and measures under the local improvement plan to mean enough progress in one year that, if the same rate were maintained in subsequent years, the students would master the core competencies by completion of the program. The commenters also suggested that § 403.204 clarify that the State and recipient must develop the joint plan for the year after the year in which the local program does not show sufficient progress, and not two years after the program does not show improvement. The commenters felt that § 403.204 should clarify that the requirement that the State board and the recipient must work with teachers, parents, and students to develop a joint plan for improvement must enable these groups to participate meaningfully in the development of the plan.

Discussion: The Secretary does not agree that § 403.204 needs clarification on the points suggested by the commenters. Acceptable progress may vary, depending on the nature of the deficiencies that prompted the local improvement plan, and the resources available to the recipient to address the deficiencies. The State board, in consultation with the recipient, should have the latitude to determine what constitutes acceptable progress under a local improvement plan.

Also, in accordance with section 117(c) of the Act, § 403.204 properly provides that a recipient has one year in which to show improvement under the local improvement plan developed under § 403.192. Only after this year may the State board require the recipient to enter into a joint improvement plan under § 403.204. Finally, the Secretary believes that the requirement that the State board and recipient provide for effective participation by parents, teachers and students in developing the joint plan is implicit in § 403.204 and does not agree that elaboration on this point is necessary.

Changes: None.

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Comments: Some commenters requested that the illustration of providing full participation under § 403.111(a) be amended to indicate that an LEA could use funds from sources other than § 403.112 to provide supplementary services to special populations students.

Discussion: The illustration provides only one example of the manner in which an eligible recipient can provide full participation for a special populations student. It is not intended to rule out any other ways of providing full participation, nor is it intended to indicate the source of funds to be used. Moreover, § 403.190(a)(1)(i)(B) expressly requires an eligible recipient applying for funds under §§ 403.112, 403.113, or 403.116 to describe how it will use those funds or funds from other sources to improve its program with regard to each requirement and activity described in § 403.111(c) and (d), including supplementary services designed to meet the needs of special populations. Thus, the Secretary does not believe that further clarification is necessary.

Changes: None.

Comments: Some commenters believed that Example 1 under the illustrations of providing equitable participation under § 403.111(c)(3) is a bad example because it provided an extremely superficial method for informing parents and students about program options and providing them with an opportunity and means to make an informed and reasoned decision when making a critical career choice.

Discussion: The Secretary believes that the example illustrates well that one way to provide equitable participation for the students in an LEA is to have an area vocational education school that will receive the LEA's allocation under the Act provide information and an opportunity for enrollment directly to the students and their parents. The example does not state that this is the only method of providing equitable participation, nor does the Secretary agree that it implies that a one-time meeting is the only service necessary to ensure the equitable participation of these students.

Changes: None.

Part 405—National Tech-Prep Education Program

Consulting with employment and training agencies and employment service agencies (§ 405.20)

Comments: One commenter noted that applications could receive extra points under § 405.20(d) if, in addition to other factors, they are developed in consultation with business, industry, and labor unions. The commenter recommended expanding the types of entities with whom applicants should consult to include employment and training agencies and employment service agencies in order to receive the extra points.

Discussion: The Secretary agrees that applicants should consult with as broad a range of entities as possible in

developing their applications, but has included in § 405.20(d) only the entities specified in section 345(d) of the Act. Section 405.21(h)—Adequacy of resources and commitment— includes a factor for evaluating the use of non-Federal resources to provide project services and activities. The Secretary believes that this factor sufficiently encompasses the types of entities the commenter has suggested be involved with proposed projects.

Changes: None.

Equal access for special populations (§ 405.21)

Comments: Several commenters suggested amending the selection criteria to give substantial weight to the quality of the applicant's plan for serving individuals who are members of special populations. The commenters did not believe that the selection criteria adequately reflected the requirement of section 344(b)(6) of the Act to provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals.

Discussion: Under section 344(b)(6) of the Act, providing equal access to members of special populations is a threshold requirement that must be met before an application can be considered for funding. Therefore, the Secretary does not agree that providing equal access to members of special populations should be a factor in the evaluation process.

Changes: None.

Part 406—State-Administered Tech-Prep Education Program

Extending tech-prep education programs to grades lower than the last two years of secondary school (§ 406.3(b)(2))

Comments: Several commenters were concerned that tech-prep education programs are restricted to sequences of study beginning in the eleventh grade. Because they believed that students need to be adequately prepared for tech-prep education programs prior to their enrollment in these programs, the commenters recommended that projects be allowed to use tech-prep education program funds to identify appropriate academics, restructure curriculum, and provide career counseling and vocational assessment to students enrolled in the tenth grade and lower.

One commenter stated that students' success in tech-prep education programs could be enhanced by exposing students to more academically rigorous courses and applied teaching techniques before they enroll in tech-prep education programs.

Another commenter cautioned that tech-prep education programs will likely attract a higher proportion of females and minorities to these programs and that allowable support services should be made available to students before they make a commitment to the program.

While most commenters did not specify at which grade these services should begin, several urged that tech-prep education programs provide flexibility for using funds beginning in grade nine; another commenter recommended that projects offer services to students as early as the seventh grade.

Discussion: The Secretary agrees that students should receive services to prepare them for entry into tech-prep education programs at the eleventh grade. Section 344(b)(2) of the Act specifies that tech-prep education programs be offered during the two years of secondary school preceding graduation followed by two years of higher education or two or more years in an apprenticeship program. However, with respect to tech-prep education at grades before the 11th grade, section 235(c)(1)(G) of the Act allows funds under title II, part C of the Act to be used for tech-prep education programs that fall within the definition of vocational education without regard to the grade level of the participants. Moreover, as discussed in response to comments on § 406.3(b)(7), the Secretary has determined that tech-prep education programs must provide preparatory services to all populations, which as defined in § 400.4(b) includes outreach, guidance, and counseling services to potential candidates for these programs.

Changes: None.

Clarify the services and activities for individuals who are members of special populations (§ 406.3(b)(6))

Comments: Several commenters recommended providing guidance concerning the meaning of equal access and services for individuals who are members of special populations by referring to section 118 of the Act.

Discussion: The Secretary agrees that it would be helpful for applicants to know which services members of special populations must receive under section 344(b)(6) of the Act, but does not agree that section 118 of the Act applies to the State-Administered Tech-Prep Education Program. The Secretary believes that the assurances required in section 118 of the Act apply only to the programs under Title III of the Act that the Act requires to be operated in accordance with the State plan.

The applicable standard under the tech-prep education program is to provide members of special populations with an opportunity to enter tech-prep education that is equal to the opportunity afforded to the general student population.

Changes: Section 406.3(b)(6) has been changed to clarify that providing equal access for members of special populations means providing an opportunity for these students to enter tech-prep education that is equal to the opportunity provided to the general student population.

Providing preparatory services in connection with tech-prep education programs (§ 406.3(b)(7))

Comments: Several commenters urged that projects be allowed to use tech-prep education program funds to provide preparatory services for students enrolled in the tenth and lower grades. The commenters observed that funding for tech-prep education programs is restricted to providing services to students beginning in the eleventh grade and that this restriction prevents programs from providing preparatory services to students before they become enrolled in tech-prep education programs.

Some commenters noted a contradiction in the requirement to provide preparatory services to assist participants in tech-prep education programs contained in section 344(b)(7) of the Act and the definition of "preparatory services" contained in section 521(24) of the Act. One commenter recommended that the definition of "preparatory services" be applied consistently throughout the regulations.

Discussion: The use of the term "preparatory services" in connection with tech-prep programs has created confusion. That term as defined in section 521(24) refers to services for "individuals who are not enrolled in vocational education programs" and includes services that are not applicable to students who are enrolled in vocational education programs, such as outreach and recruitment. Section 344(b)(7) of the Act requires the inclusion of "preparatory services" that will assist all participants enrolled in tech-prep programs. Thus, the Secretary agrees that the requirement to provide preparatory services to all participants under section 344(b)(7) of the Act is inconsistent with the definition of "preparatory services" in section 521(24) of the Act, which includes only services to individuals not enrolled in vocational education. Item 182 of the Conference Report accompanying the Act indicates

that the requirement to provide preparatory services to all participants originated in section 212(b)(6) of the Senate amendment as a requirement to provide pre-vocational programs that assist the participants in sections 223 and 242 of the Senate amendment, which included discrete populations such as the economically disadvantaged, criminal offenders, and single parents. (H.R. Rep. No. 660, 101st Cong., 2d Sess. 138 (1990).) The conferees agreed to make a conforming amendment to change "pre-vocational" to "preparatory" and, without explanation, changed "participants in sections 223 and 242" to "all participants." Thus, the Secretary believes that Congress intended to require preparatory services related to tech-prep education for "all populations"—not all participants.

Changes: The language of § 406.3(b)(7) has been changed to indicate that preparatory services must be provided under tech-prep education programs for all populations. A conforming change has been made to § 405.21(a)(7).

Broadening program scope and definitions (§ 406.5)

Comments: One commenter recommended providing a measure of flexibility in program definitions in order to enhance program effectiveness and broaden the scope of projects that could be funded under the program. The commenter, however, did not provide specific examples of definitions that might need to be clarified, modified, or expanded to provide for greater flexibility.

Discussion: The Secretary agrees that the program definitions should provide for a degree of flexibility within the requirements and specifications of the Act. Even though the definitions specified for the State-Administered Tech-Prep Education Program are taken almost verbatim from the definitions specified in the Act, the Secretary believes that these definitions provide sufficient flexibility for applicants to propose a variety of tech-prep education programs that will be both effective and wide ranging in scope.

Changes: None.

Bureau-funded schools or tribally controlled community colleges (§ 406.10(b))

Comments: A commenter noted that the statute provides that the Bureau of Indian Affairs funded schools and tribal colleges are eligible recipients for the tech-prep program. The commenter recommended that a requirement be added to § 406.10(b) to ensure equal consideration for all applications from consortia that include secondary schools funded by the Bureau of Indian Affairs or tribally controlled community colleges.

Discussion: While the Secretary does not believe there is a need to modify the language in § 406.10(b), the Secretary wishes to emphasize that §§ 406.30(a)(1) and 406.30(a)(2)(i) make it clear that an institution receiving assistance as a secondary school funded by the Bureau of Indian Affairs and non-profit institutions of higher education, including institutions that receive assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S. 1801 *et seq.*), are eligible to apply to a State for an award.

Changes: None.

Administration of consortia (§ 406.30)

Comments: Several commenters recommended that a tech-prep education program consortium be administrated only by an accredited vocational education program provider. The commenters observed that this requirement would prevent consulting organizations or service providers from skimming off administrative charges and adding staff by using Federal money to administer other programs.

Discussion: The Secretary agrees that tech-prep education program consortia should be administrated only by accredited vocational education program providers. However, because the Act does not specify that the members of a consortium be accredited, the Secretary believes that the issue of whether the members of a consortium should or must be accredited should be left to the discretion of State boards of vocational education.

Regarding the issue of consulting organizations or other service providers using tech-prep education money for purposes other than those set forth in the Act, the Secretary notes that only educational agencies, schools, or institutions are eligible to be members of a consortium, as specified in § 406.30(a). Although a consortium may contract with a consulting organization or other service provider for certain goods or services, the administration of the tech-prep education program should remain within the members of the consortium. In terms of the use of Federal funds, the Secretary notes that the State boards of vocational education are responsible for ensuring that local recipients meet the requirements of the program.

Changes: None.

Applicability of Part 403

Comments: Several commenters stated that many of the provisions of part 403, such as State assessment, State plans, and evaluation, are relevant and applicable to the State-Administered Tech-Prep Education Program. The commenters recommended that portions of part 403 be made applicable to the State-Administered Tech-Prep Education Program to ensure that tech-prep education programs are not developed and implemented in isolation from the processes by which the State makes plans for addressing and improving the overall vocational education programming in the State.

Discussion: The Secretary does not believe that Congress intended the requirements related to the State plan to apply to the State-Administered Tech-Prep Education Program. Unlike other programs authorized by title III of the Act, States are not required to conduct the tech-prep education program in accordance with the State plan.

Changes: Sections 406.2 and 406.10 have been changed to clarify that the State-Administered Tech-Prep Education Program is not subject to State plan requirements.

Part 407—Supplementary State Grants Program

Applicability of Part 403 (§§ 407.4 and 407.31)

Comments: Some commenters believed that Part 403, which contains the regulations applicable to the State Vocational and Applied Technology Program, should apply at least in part to the Supplementary State Grants Program because this program was intended to provide funds to supplement the basic grant awarded under Part 403. These commenters recommended that §§ 407.4 and 407.31 be clarified in this respect. Other commenters objected to the requirement imposed in § 407.10(a) that a State include its application for a supplementary State grant in its State plan. These commenters argued that this requirement is too restrictive and recommended that the Secretary establish a separate application process.

Discussion: The Secretary believes that the Supplementary State Grants Program was intended to supplement local vocational education programs—not simply the particular projects, services, and activities assisted under the basic grant awarded under Part 403, as suggested by some commenters. Thus, the Secretary is clarifying that funds awarded under Part 407 must be used only to assist activities designed to improve an LEA's vocational education facilities or program. Consistent with this, the Secretary has clarified that only an LEA providing secondary school services may receive funds under the Supplementary State Grants Program and that the State must distribute any funds allocated to an LEA that operates only elementary programs to one or more local or regional educational

agencies based on the number of students each agency received in the previous year from the LEA.

The Secretary does not agree that the Supplementary State Grants Program should be subject to the requirements of Part 403 for a State to include its application for a supplementary State grant in its State plan. On the contrary, the authority for this program, which is contained in title III, part F of the Act, does not require that this program be conducted by a State in accordance with its State plan, as do some of the programs authorized in title III of the Act. Although the funds awarded under the Supplementary State Grants Program are to be used to supplement local vocational education facilities and programs, title III, part F clearly specifies the allowable uses of those funds, which are more limited than the allowable uses of the basic grant, as reflected in § 407.31. Moreover, section 355 of the Act expressly gives the Secretary the authority to determine the time, manner, and contents of an application under this program. Therefore, after considering these comments and other comments concerning the scope of the local assurances required by § 403.190(b), the Secretary is amending § 403.130 to clarify that the Supplementary State Grant Program is not a special program subject to the requirements of the State plan. See the discussion of the special programs subject to the State plan requirements in response to a comment on § 403.190(b).

Changes: Sections 407.1 and 407.31(b) have been changed to clarify that funds awarded under the Supplementary State Grants Program must be used to assist in improving only vocational education facilities or programs. Section 407.33(b) has been added to clarify that the State may not distribute funds awarded under the Supplementary State Grants Program to an LEA that operates only elementary programs but rather must distribute any funds allocated to an ineligible LEA to one or more local or regional educational agencies based on the number of students each agency received in the previous year from the LEA. Section 403.130(e) has been changed to remove the Supplementary State Grants Program from the list of special programs that are subject to the requirements of the State plan. Conforming changes also have been made to §§ 403.32(d), 403.131(c), 403.187(b), 407.10(a), 407.22(b) and (c), and 407.31.

Part 408—Community Education Employment Centers Program

Eligibility requirement—75 percent predominantly educationally disadvantaged applicant (§ 408.2(b))

Comments: Several commenters suggested that if, as an eligibility requirement, an applicant must be serving a population that is both predominantly educationally disadvantaged and predominantly economically disadvantaged, then the figure of 75 percent may be too high as a threshold for determining "predominantly educationally disadvantaged." The commenters noted that, although this threshold was satisfactory for economically disadvantaged students, the use of this figure for both predominantly educationally disadvantaged and predominantly economically disadvantaged may penalize an applicant that is doing a good job of boosting the academic achievement of economically disadvantaged students.

Discussion: The Secretary notes that Congress' intent is that the Community Education Employment Centers Program serve those individuals with the greatest educational and economic need. The Secretary further notes that 75 percent has been used previously as a measure of the term "predominantly" under this program, and the Secretary finds this to be a reasonable definition. Moreover, the Secretary finds nothing in the Act to support applying different percentages for determining predominantly educationally disadvantaged and predominantly economically disadvantaged.

Changes: None.

Coordinating with service delivery areas under the JTPA program and other youth employment and training programs (§ 408.10(f))

Comment: One commenter recommended identifying service delivery areas under the JTPA program and other youth employment and training programs as being among the appropriate public and private community agencies that applicants must provide assurances that they will coordinate with in the operation of community education and employment centers.

Discussion: The Secretary believes it is appropriate for projects funded under this program to coordinate with service delivery areas. However, the Secretary finds the enumeration of the entities listed in § 408.10(f) sufficiently broad to include all appropriate parties.

Changes: None.

Incorporate required activities into selection criteria (§ 408.22)

Comments: Several commenters suggested that the selection criteria did not give sufficient attention to how well applicants address some of the basic program requirements specified in § 408.3(a). The requirements the commenters recommended incorporating into the selection criteria are those included in §§ 408.3(a)(2), 408.3(a)(3), 408.3(a)(4)(iii), 408.3(a)(6), and 408.3(a)(7). The commenters proposed strengthening the language of selection criterion (e)— Demonstration and dissemination—to incorporate a full program of technical assistance and training, which the commenters believed is warranted by the language of § 408.3(a)(7). Finally, the commenters asked for assurance that basic program requirements would be considered as application eligibility factors.

Discussion: An applicant must describe how it will comply with the program requirements to which the commenters referred in order for its application to be eligible for review in a competition. Therefore, it is not necessary to consider these requirements again in the selection criteria.

Regarding selection criterion (e), the Secretary agrees that the language of the criterion could be strengthened by including a reference to applicants' plans for providing technical assistance and training to others wishing to replicate project methods and techniques.

Changes: Section 408.22(e)(5)— Demonstration and dissemination—has been changed to include a reference to the provision of technical assistance and training activities.

Promulgating a student code of conduct (§ 408.32(c)(3))

Comment: Several commenters requested additional guidance regarding the requirement for the development of a student code of conduct in consultation with students and teachers. The commenters recommended clarifying the requirement by incorporating language to indicate that consultation must be organized, systematic, ongoing, informed, and timely in relation to decisions about the development of a student code of conduct.

Discussion: The Secretary expects that this and other administrative requirements will be carried out efficiently and effectively as described by the commenters. However, the Secretary does not believe that the suggested regulatory language is appropriate or necessary.

Changes: None.

Evaluation requirements (§ 408.34)

Comments: Several commenters recommended adding language to the evaluation requirements regarding student academic and vocational competencies to embrace the broad range of academic and vocational skill areas required for this program. The commenters recommended this change in order to ensure that the evaluation would not be too narrowly focused on particular course-work or skill areas.

Discussion: The Secretary agrees that it would be helpful to coordinate the evaluation requirements with the focus of the academic and vocational skills areas specified in § 408.3(a)(4)(i) and (iii)(B).

Changes: Section 408.34(b)(1) has been changed to include a reference to the academic and vocational competencies listed in § 408.3(a)(4)(i) and (iii)(B).

Part 409—Vocational Education Lighthouse Schools Program

Developing linkages with employment, training, and social service programs (§§ 409.3(d) and 409.21(a)(1)(v))

Comments: One commenter recommended adding employment, training, and social service programs as being among the entities with which applicants must develop comprehensive linkages in establishing vocational education lighthouse schools.

Discussion: The Secretary agrees that vocational education lighthouse schools should develop comprehensive linkages with employment, training, and social service programs. The Act, however, only requires applicants to develop comprehensive linkages with local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate. Although comprehensive linkages are not required, selection criterion (g)—Budget and cost effectiveness—does include a factor for measuring an applicant's proposed use of funds available from non-Federal sources such as appropriate employment, training, and education programs to acquire equipment and facilities.

Changes: None.

Education and training needs (§ 409.3(e))

Comments: Several commenters recommended changing the language in § 409.3(e), "education training needs," to "education and training needs" to be consistent with the legislative history of the provision.

Discussion: The Secretary agrees that the language of this section should be consistent with other references to education and training needs.

Changes: Section 409.3(e)(1) has been changed to clarify that education and training are distinct activities. A conforming change has been made to § 409.21(a)(2)(i).

Selection criteria—Program factors (§ 409.21(a))

Comments: Several commenters recommended adding provisions to the selection criterion program factors to include certain activities specified under § 409.3(a), including the offering of exceptionally high quality programs for disadvantaged and minority youth and providing special services and modifications necessary to help individual students successfully complete the program.

Discussion: The Secretary agrees that these factors should be included in the selection criteria. However, a review of the pertinent portions of the regulations reveals that they are already addressed adequately.

Changes: None.

Selection criteria—Educational significance (§ 409.21(b))

Comments: Several commenters recommended substituting language relating to the activities specified in § 409.3(a) for the data elements specified for the selection criterion in § 409.21(b)(1) and the factors identified in § 409.21(b)(2) and (3). The commenters suggested that the proposed data elements could result in focusing on programs that do not have key elements pertinent to the establishment and operation of Lighthouse Schools. Additionally, the commenters urged that more emphasis be placed on new and innovative approaches rather than on basing models on other successful vocational education programs that may or may not have data elements related to the components needed for Lighthouse Schools.

Discussion: The Secretary agrees that the language of the criteria should relate as much as possible to the activities specified for the program. The Secretary notes, however, that the activities specified in § 409.3 have, in large part, already been incorporated into selection criterion (a)—Program factors.

Regarding the selection of applications based on new and innovative approaches, the Secretary notes that the use of new and innovative techniques is one of the factors specified for this criterion. Vocational education lighthouse schools, however, also should include components based on successful programs that are supported by the empirical data specified in § 409.21(b)(1).

Paragraphs (2) and (3) in § 409.21(b) are, by design, intended to encourage applicants to relate the objectives and techniques of vocational education lighthouse schools to nationally significant needs and problems. The Secretary agrees, however, that the language of these factors could be tied more closely to the outcomes of the program identified in criterion (a)—Program factors.

Changes: Sections 409.21(b)(2) and (3) have been changed to clarify that the educational significance of an application will be assessed in terms of the program activities in § 409.21(a).

Selection criteria—Evaluation plan (§ 409.21(d))

Comments: Several commenters recommended relating the expected outcomes of participants under § 409.21(d) to the required activities described in § 409.3(a).

Discussion: The Secretary agrees that certain of the six required activities in § 409.3(a) could and should be related to participant outcomes. Others are not participant-oriented and would not be appropriate to evaluate in terms of participant outcomes.

Changes: Section 409.21(d)(3) has been changed to clarify that an application's evaluation plan will be assessed on the basis of how well the expected outcomes of participants identified in the plan relate to the activities required in § 409.3(a), as appropriate.

Selection criteria—Demonstration and dissemination (§ 409.21(e))

Comments: Several commenters recommended expanding the language of the criterion in § 409.21(e) to reflect the specific demonstration and dissemination activities required in § 409.3(b) and in the Act.

Discussion: The Secretary agrees that the demonstration and dissemination criterion could incorporate more specifically the required activities in § 409.3(b), but believes that successful applicants will have no difficulty in relating the specific activities described in § 409.3(b) to the more generic criterion factors stated in § 409.21(e).

Changes: None.

Evaluation requirements (§ 409.30)

Comments: Several commenters recommended clarifying the evaluation requirement in § 409.30 to measure student achievement to include increases in student knowledge, experience, basic and higher order skills, and problem solving abilities, as specified in § 409.3(a)(1) and (2). The commenters urged this change in order to relate student achievement to the

broad range of academic and vocational skill areas required for the program.

Discussion: The Secretary agrees that student achievement should be related to the broad range of academic and vocational skill areas required for the program.

Changes: Section 409.30(c) has been changed to clarify that the areas described in § 409.3(a)(1) and (2) are the types that must be included in the evaluation of grant activities.

Incorporating legislative history into regulations

Comments: Several commenters recommended adding to Part 409 a number of factors stated in a Senate proposal for Vocational Education Lighthouse Schools Program. These factors include: (1) assistance of the State educational agency in assisting and co-sponsoring the project; (2) use of other funds to cover core program costs; (3) matching requirement; (4) minimum grant size; (5) location in urban and rural areas; and (5) consultation with others in developing the application.

Discussion: The provisions to which the commenters refer are contained in a Senate version of the legislation which was not enacted into law. However, the intent of several of the factors identified by the commenters is reflected in the selection criteria and additional factors for the program. The selection criteria (g)—Budget and cost effectiveness—and (h)—Adequacy of resources and commitment—provide for evaluating the extent to which non-Federal resources and funds are used to support project activities. Selection criterion (a)—Program factors—provides for an assessment of the involvement of others in planning for and developing the project. The Act does not mandate minimum grant size or a matching requirement. However, the commenters' final concern is addressed by the additional factor specified in § 409.22, which should ensure an equitable geographical distribution of projects in urban and rural areas.

Changes: None.

Part 410—Tribally Controlled Postsecondary Vocational Institutions Program

Evaluating applications (§ 410.20)

Comments: Several commenters believe that the proposed regulations combine and confuse the Indian Vocational Education Program covered by Part 401 and the Tribally-Controlled Postsecondary Vocational Institutions Program covered by Part 410. Specifically, the commenters pointed out that the Department proposed, in § 410.20, to apply only 85 percent of the selection points to the criteria in § 410.21. The Secretary proposed to reserve fifteen points that would be allocated at a later date among the selection criteria in § 401.21. The commenters think that it would be impossible for an applicant to simultaneously adhere to both sets of award rules and that applicants would be confused as to which of the selection criteria would be applied in the competition. The commenters proposed that the Secretary delete § 410.20(b) and (d) from the regulations and apply all of the award points to the selection criteria in § 410.21.

Discussion: The Secretary agrees with the commenters that typographical errors in § 410.20(b) and (d) make it appear that the two programs were combined and confused. The Secretary intends to evaluate applications using the selection criteria in § 410.21. Moreover, the 15 points reserved under § 410.20(b) will be distributed among the selection criteria in § 410.21 in order to emphasize one or more criteria in a particular competition, if the Secretary deems this necessary. The commenters are right in that § 410.20(b), (c), and (d) should each refer to the criteria in § 410.21 instead of to the criteria in § 401.21.

Changes: Sections § 410.20 (b), (c), and (d) have been changed to refer to § 410.21 instead of § 401.21.

Additional factors (§ 410.22)

Comments: Several commenters were concerned that § 410.22(a) and (b) appear to say the Secretary may make awards without regard to the clear statutory directive that the first two awards are intended for the Crownpoint Institute of Technology and United Tribes Technical College.

Discussion: There are no statutory provisions that limit the first two awards to Crownpoint Institute of Technology and United Tribes Technical College. While these two institutions were the only institutions that applied for funds in the first funding cycle, many more institutions may be eligible and may apply for support in future funding cycles.

Changes: None.

Comments: Several commenters believed that the additional factors in § 410.22(a) and (b) regarding an equitable distribution of funds among Indian tribes are in conflict with the statute. As support for the argument, the commenters cited section 383(b) of the Act specifying that funds are to be used for "basic support for the education and training of Indian students" and section 384 of the Act which establishes eligibility criteria. The commenters believed that the Department should award grants based on the most highly rated applications when reviewed against the eligibility requirements of § 410.2.

Discussion: The Secretary has followed carefully the statutory language in establishing eligibility requirements in § 410.2 and believes it is reasonable to reserve, in § 410.22(a) and (b), authority to avoid an inequitable distribution of awards among Indian tribes especially should there be an increase in the number of institutions applying for and receiving an award under this program.

The commenters confuse factors for eligibility with factors for competitive selection from among all of the eligible institutions that apply. The Secretary, first, applies the eligibility requirements of § 410.2 to all applications for funding. Only those applications meeting all of the eligibility requirements of § 410.2 are reviewed against the selection criteria in § 410.21 and the equitable distribution factors in § 410.22. Applications not meeting any of the eligibility requirements in § 410.2 are returned to the applicants on the basis of their ineligibility without being reviewed against the selection criteria. The equitable distribution factors in § 410.22 would be used only when the number of institutions applying outstripped the ability of the Federal government to provide awards for all of them.

Changes: None.

Comments: Several commenters urged the Department to define how it intends to carry out § 410.22(a) requiring the Secretary to consult, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered. The commenters stated that no consultation has occurred since the enactment of this provision of the Act 15 months ago.

Discussion: The commenters are correct that the Secretary was not able to consult with boards of trustees and tribal governments chartering the institutions applying in the first funding cycle of this program. Section 385 of the Act requires the consultation "to the extent practicable." The desired target date for grant awards established by the Congress for the first award cycle made any such consultation impracticable. The Secretary, of course, intends to comply with the provisions of section 385(c) of the Act in the future. Moreover, the Secretary does not ordinarily regulate the administrative responsibilities of the Department and, therefore, would not regulate the consultation process.

Changes: None.

Comments: Several commenters noted that § 410.22(c), which permits the

Secretary to consider whether funding a particular applicant duplicates an effort already being made, should be reconsidered and elaborated upon in the light of sections 387 (a), (b), and (c) of the Act. The commenters noted that, under these sections of the statute, eligible institutions may seek non-duplicative financial aid from other sources.

Discussion: The Secretary has reviewed § 410.22(c) within the context of sections 387(a), (b), and (c) of the Act. The Secretary believes that the statute ensures that the eligible institutions have the freedom to seek non-duplicative funding. The Secretary does not believe that detailed, and possibly restrictive, regulations are needed on this provision.

Changes: None.

Part 412—National Network for Curriculum Coordination in Vocational and Technical Education (Network)

Comments: Several commenters suggested adding to § 412.3 a provision that the information-gathering and sharing functions of the Network include the Lighthouse School (part 409) and the Community Education Employment Centers (part 408). In addition, the commenters thought these programs should be made explicitly eligible for awards under § 412.2.

Discussion: The National Network for Curriculum Coordination in Vocational and Technical Education (Network), consisting of six curriculum coordination centers, is a system that disseminates information resulting from research and development activities carried out under the Act to ensure broad availability of information at the State and local levels. This broad access would include sharing information with many organizations and individuals including Lighthouse Schools and Community Education Employment Centers.

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program. Therefore, the Lighthouse Schools and Community Education Employment Centers would be eligible to apply for an award when competitions are conducted. The Secretary does not believe it is necessary to explicitly list the specific agencies that are eligible under § 412.2.

Changes: None.

Part 413—National Center or Centers for Research in Vocational Education

Types of activities (§ 413.3)

Comments: Several commenters urged deletion of the phrase, "or cooperative agreement," from § 413.3 as being outside the scope of the Act since the Act gives the Secretary authority only to award a grant or grants. One commenter pointed out that a grant is the instrument that has been used with past and current Centers; hence, a precedent has been established. Another commenter stated that although a cooperative agreement is a form of a grant, for those who are responsible for the establishment and implementation of a national research program, stability of mission over the life of the grant is important.

Discussion: The Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) authorizes the Department to use cooperative agreements in lieu of grants when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity. The Secretary makes a determination of when a cooperative agreement is a more appropriate instrument for the use of funds on a case-by-case basis.

Changes: None.

Comments: Several commenters requested that the research and development activities listed in § 413.3(a) be modified to include language specifically addressing career guidance and counseling.

Discussion: Because section 404(b) of the Act does not designate specific disciplines, it would be inappropriate for the Secretary to do so by regulation. The Secretary believes that the regulations provide the National Center with sufficient guidance to select from a range of disciplines that would be appropriate in developing programs to accomplish the purposes of the Act.

Changes: None.

Comments: One commenter stated that section 404(b)(2)(L) of the Act which reads "upon negotiation with the Center, and if funds are provided pursuant to subsection (d), such other topics as the Secretary may designate" has been omitted from the draft regulations. The commenter pointed out that the flexibility provided by the omitted activity is necessary for the Center to respond to emergent issues.

Discussion: The statutory authority established by section 404(b)(2)(L) of the Act is repeated in § 413.3(a)(1)(iii) of the regulations. An identical provision for dissemination and training activities is repeated in § 413.3(b)(1)(iv) of the regulations. Also, the Secretary interprets § 413.30(b) of the regulations as providing an additional opportunity for the National Center to respond to emergent needs.

Changes: None.

Separate competitions (§ 413.20)

Comments: Several commenters stated that holding two separate competitions for the National Center or Centers would appear to be awkward and extremely time-consuming and would appear to give preference to splitting the functions of the research center into two centers rather than giving preference to maintaining one comprehensive center as it now exists and as is clearly preferred by Congress. The commenters stated that it was the intent of Congress to have all applicants submit three applications simultaneously: One demonstrating the applicant's capacity to create an applied research and development center; one demonstrating the applicant's capacity to create a dissemination and training center; and one demonstrating the applicant's capacity to carry out both functions. The commenters suggested that, in order to be consistent with legislative intent, the Secretary should first review the applications that propose to perform both sets of activities. If none of those applications demonstrate the applicant's capability of carrying out both sets of activities, then and only then should separate applications be considered. The commenters also believed that awarding five preference points for each competition could result in the two competitions being won by different institutions even in the event that there is at least one institution capable of carrying out both functions. The commenters further expressed the opinion that only allowing five preference points provides inadequate competitive advantage to those applicants that are able to demonstrate their capacity to effectively carry out both functions.

Discussion: The Secretary agrees that, in section 404(a)(5) of the Act, Congress expressed its preference that a single center be funded for the purpose of carrying out both the research and development and the dissemination and training activities referenced in section 404(a) of the Act, if a single institution or consortium demonstrated its ability to carry out both of the activities effectively. The Secretary also agrees that, as expressed in section 404(a)(5) of the Act, Congress intended the funding of two separate centers to occur only in the event that no single institution or consortium of institutions could demonstrate the ability to carry out both functions effectively. However, the Secretary does not agree with the commenters' suggestion that applicants should be required to submit three applications, two for carrying out the

two program activities separately and one for carrying out both activities together. In the view of the Secretary, this proposal would impose an unnecessary burden upon applicants by requiring them to provide voluminous duplicative material that would serve little, if any, function in assisting the Secretary to evaluate either the activities proposed by an applicant or an applicant's ability to carry out both program activities effectively. In addition, the Secretary considers the Act's reference to an applicant's ability to carry out both activities "effectively" as authorizing him to make a single award only if he has determined that the applicant will use the funds awarded in accordance with the purposes of section 404 of the Act. Finally, the Secretary continues to believe that the most equitable and efficient means by which he can determine the ability of each applicant institution or consortium of institutions to carry out both program activities effectively, is to hold the two competitions provided for in § 413.20 of the NPRM and to review and evaluate each application according to the criteria in §§ 413.21 and 413.22.

However, in response to the comments on the program competition as set forth in the NPRM as well as in response to the commenters' opinion that a five-point preference fails to provide sufficient consideration to an institution or consortium that is able to carry out both activities effectively, the Secretary has revised § 413.20. Under § 413.20, the Secretary will review each application submitted, evaluate and score each application according to the applicable criteria, and determine whether an applicant submitting applications to carry out both program activities under section 404(a) of the Act has demonstrated its ability to do so effectively. After the Secretary has reviewed, evaluated, and scored each application, each applicant that has submitted two applications and has earned a score of 80 points or higher on each of its two applications, will be deemed by the Secretary to have demonstrated the ability to carry out both activities effectively and will be placed in a pool with any other applicant that has earned a score of 80 points or higher on each of its two applications. The applicant scoring the highest combined score from among the applicants in the pool will be the recipient of a single grant award for the purpose of carrying out both program activities. If only one applicant can demonstrate the ability to carry both activities effectively, then that applicant will be awarded a single grant. If no applicant can demonstrate the ability to carry out both activities effectively, then, as provided for in section 404(a)(5) of the Act, the Secretary will award separate grants to two institutions, one for each of the activities under section 404(a) of the Act.

The Secretary believes that these revisions to § 413.20 are responsive to the commenters' concerns, provide for an equitable and efficient competition that gives a strong preference to funding a single institution or consortium, and ensure that if a single institution or consortium is indeed funded, it will have demonstrated the ability to carry out both program functions effectively and in accordance with the purposes of section 404 of the Act.

Changes: Section 413.20 has been revised to clarify that while the Secretary holds two competitions and judges applications according to the criteria in §§ 413.21 and 413.22, the Secretary intends to give preference in grant selection to an institution or consortium of institutions that demonstrates the ability to carry out effectively both activities listed in section 404(a) of the Act and in § 413.3(a) and (b). Section 413.20(h) of the NPRM, which provided for the assignment of five preference points to certain applications, has been deleted. In lieu of preference points, new paragraphs (h) and (i) have been added to § 413.20 to explain the specific process by which the Secretary determines the ability of applicants to carry out both program activities effectively and by which the Secretary gives preference to the selection of a single grant recipient. Finally, a new paragraph (j) has been added to § 413.20 to clarify that, in the event that no applicant institution or consortium of institutions demonstrates to the Secretary its ability to carry out both activities effectively, the Secretary makes two grant awards to the applicants scoring the highest in each of the competitions.

Selection criteria (§§ 413.21 and 413.22)

Comments: Several commenters questioned the allocation of 35 out of 100 points to the selection criterion "Plan of operation" as compared to 20 out of 100 points for "Program factors," arguing that the weight given to these selection criteria does not reflect sufficiently the quality of the research and development activities. The commenters questioned the same allocation of points to dissemination and training activities. The commenters suggested shifting points from "Plan of operation" to "Program factors" for both research and development activities and dissemination and training activities so they would be more equally weighted.

Discussion: The Secretary assigns points to each set of criteria as a means of encouraging applicants to give greater consideration to certain criteria. The Secretary assigned less weight to "Program factors" than to the "Plan of operation" since the kinds of activities to be carried out by the National Center are based upon statutory requirements whereas a plan of operation is not specified in the Act. Moreover, the NPRM contained a technical error in the number of points reserved by the Secretary for distribution among the criteria in §§ 413.21 and 413.22 in accordance with paragraph (d) of §§ 413.21 and 413.22. The number of reserved points for each set of criteria is 10 instead of 15, as indicated in proposed § 413.20(b).

Changes: Section 413.20(b) has been changed to indicate that the Secretary reserves 10 points to be distributed among the criteria in §§ 413.21 and 413.22.

Comments: Several commenters expressed concern that the selection criteria were not specific enough to provide a basis on which to judge the quality of both the research and development activities and the dissemination and training activities. The commenters believed that the quality of research and development activities and the dissemination and training activities should be judged by: (1) The highest standards of quantitative research methodology, and (2) previous experience in conducting similar activities. The commenters expressed additional concern that the proposed regulations did not sufficiently focus on the coordination between the research and development activities and the dissemination and training activities. In addition, the commenters suggested that the criteria for selecting key personnel should be based on their competency in all phases of applied social science methodology.

Discussion: The Secretary believes that the issue of quality is adequately addressed under §§ 413.21(a) and 413.22(a) which stress that each of the required activities, whether research, development, dissemination, or training, should be of high quality and effectiveness. The Secretary points out that one of the selection criteria is vocational education experience in conducting applied research and development or dissemination and training activities, or both, in the field of vocational education. The Secretary further points out that the coordination

issue is addressed under the criterion "Coordination activities" which requires that applicants submit an effective plan for the coordination of activities described in § 413.3(a) and (b). In the Secretary's view, an effective plan that will ensure coordination of the research and development activities and the dissemination and training activities, whether between two centers, or within one center, is essential.

The Secretary agrees that key personnel should have appropriate professional qualifications in fields related to the proposed activities. The Secretary believes, however, that § 413.21(c)(2)(i) provides sufficient guidance in this regard.

Changes: None.

Part 419—Internship for Gifted and Talented Vocational Education Student Program

Vocational student organizations (§ 419.3)

Comments: One commenter requested that the designation, "vocational student organizations," be added as one of the groups for which gifted and talented students selected under this program might work as interns. The commenter also requested that the designation, "vocational student organizations," be added to the definition of "Sponsor."

Discussion: The groups listed in the § 419.3—Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education—are explicit in section 414(d)(2)(a) of the Act. The Secretary considers vocational student organizations to be nationally recognized vocational education associations that can provide quality internship opportunities. However, the Secretary does not believe it is appropriate to list in the regulations the specific nationally recognized organizations that are eligible to provide internships under this program.

Changes: None.

Part 421—Business and Education Standards Program

Comparable national organizations (§ 421.2(d))

Comments: Several commenters stated they did not think that educational associations should be listed in § 421.2(d) as an example of a "comparable" national organization to industrial trade organizations, labor groups, or joint apprenticeship committees eligible to receive grants. Another commenter felt neither educational associations, nor private and national research organizations are "comparable national organizations." One commenter suggested that educators should serve as members, as consultants, or as both to these committees, which should be composed of a broad representation of industry representatives. Others felt standards developed by educational associations could be self-serving and impede progress.

Discussion: The Secretary does not agree that educational associations or private national research organizations should be deleted from the list of comparable national organizations. Numerous occupations frequently cut across multiple industries and to choose a specific industry or trade association to represent one of these occupations would not be equitable or productive. There are many national educational professional associations, and private and national research organizations that primarily have membership from these multi-industrial occupational clusters, have ties with the industries or trade groups they represent, or both. Many have expertise in skills standards development and certification, and limiting their participation in the development of national standards would foreclose the use of this valuable expertise.

Changes: None.

Comments: One commenter requested that vocational student organizations be added as one of the groups that are comparable national organizations to industrial trade associations, labor organizations, and national joint apprenticeship committees.

Discussion: The Secretary does not believe that vocational student organizations are comparable national organizations to industrial trade associations, labor organizations, and national joint apprenticeship committees. Thus, student organizations are not included as eligible applicants in § 421.2. However, the Secretary recognizes the high potential of vocational student organizations to participate on or provide input into the technical committees charged with the responsibility of developing national standards for competencies in industries and trades.

Changes: None.

Grants to update existing standards (§ 421.3)

Comments: One commenter questioned whether the Department intends to award grants under the Business and Education Standards Program for initiatives to update existing national standards as well as those to develop new standards and recommended that the rules not be limited to new standards development. This commenter believed that, due to rapid technological changes in many sectors of our economy, standards for competencies in industries and trades must be updated to keep pace with these technological changes. The commenter requested corresponding amendments to §§ 421.1, 421.3, 421.21(a), and 421.21(b)(1).

Discussion: The Secretary agrees that standards for competencies and trades should be updated periodically and believes that the existing language of the regulations allows for the support of technical committees to update standards. However, like other applications, applications proposing to update standards will be evaluated under the selection criterion related to the extent of the need for the project.

Changes: None.

Selection criteria (§ 421.21)

Comments: Several commenters suggested that § 421.21(a) be changed to add as additional program factors the extent to which an application proposes to develop standards that address—

(a) Strong experience in and understanding of all aspects of the industry the workers will be entering (including planning, finance, management, technical and production skills, underlying principles of technology, labor, community, and health, safety, and environment); and

(b) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of reading, writing, mathematics, science, and social studies) in a technological setting.

The commenters stated that these provisions are needed to ensure that any standards are consistent with the basic thrust of the overall Act, the specific focus for skill standards used in the State assessment required in developing the State plan under the Act, and Congress's concerns for avoiding overly narrow definitions of job specific skills.

Discussion: The Secretary notes that section 416(b)(2)(A) of the Act requires that, at a minimum, standards must relate to major divisions or specialties within the occupations the applicant proposes to study. Each applicant must decide how to identify the skills from all aspects of the industry that are necessary for specific divisions or specialties within the occupation. Similarly, while the Secretary concurs that education programs should provide a broad range of transferable skills, each applicant must decide how to define these concepts and to meet these goals while identifying the specific skill standards needed for specific divisions or specialties within occupations. In order to allow maximum flexibility in addressing these issues, the Secretary

chooses not to regulate on these points. Furthermore, the Secretary expects that any standards generated by these grants will be useful to vocational education programs.

Changes: None.

Comments: Several commenters suggested that a new selection criterion be inserted in § 421.21 that would specify the composition of the proposed technical committee.

Discussion: Technical committees should be composed of individuals who are knowledgeable about the occupations to be studied and are representative of business, labor, and education. The Secretary believes that the criterion in § 421.21(c)(2) adequately specifies the composition of a proposed technical committee.

Changes: None.

Comments: One commenter proposed an addition to the criterion contained in § 421.21(g)—Dissemination plan—to include a program to encourage the implementation and use of the standards by training programs.

Discussion: The Secretary agrees with the commenter that a program to assist in the adoption or implementation of the standards once they have been developed would contribute to the overall success of the program.

Changes: Paragraph (4) has been added to § 421.21(g) to encourage the adoption and use of the proposed standards by education and training programs.

Part 425—Demonstration Project for the Integration of Vocational and Academic Learning Program

Populations to be served (§ 425.3)

Comments: Several commenters suggested that section 420(b)(3) of the Act requires each project to serve individuals who are members of special populations in addition to one or more of the populations specified in section 420(b)(4) of the Act and that the language of § 425.3(b) does not meet this requirement.

Discussion: The Secretary does not agree that section 420(b) of the Act imposes requirements applicable to the individual projects supported under this program. On the contrary, section 420(b) requires that the Secretary consider certain factors when selecting applications for funding, in order to ensure that the projects supported under this program together, for example, offer significantly different approaches to integrating curricula. In order to ensure that the Department funds applications that together serve the populations or groups listed in section 420(b) (3) and (4) of the Act, the Secretary requires under § 425.3(b) that each project serve at least one of these populations. Then, in selecting applications for funding under § 425.22(a)(3), the Secretary funds applications to ensure that the projects supported under this program together serve the populations listed in § 425.3(b).

Changes: None.

Inservice training (§ 425.3)

Comments: One commenter recommended providing inservice training in integrated curricula to academic faculty and to counselors in addition to teachers of vocational education students. The commenter pointed out that, in order to integrate vocational and academic learning, the concepts of "vocational" and "academic" need to be expanded and that traditional boundaries between the two areas must be broken. Noting that both vocational and academic instructors must cross over into the other realm in order for effective integration to occur, and that counselors must also understand curriculum offerings in order to properly advise students, the commenter recommended that projects provide inservice training to all teachers, counselors, and administrators involved in integrated curriculum efforts.

Discussion: The Secretary agrees that in order to integrate vocational and academic learning, projects should provide inservice training for both academic and vocational instructors. The regulations permit both academic and vocational teachers to receive this type of training, provided they are teachers of vocational education students.

Although the Secretary concurs that counselors and teachers of all students could also benefit from inservice training in integrated curricula, the Secretary does not believe that it is appropriate to expand § 425.3(a)(2) to include groups that do not serve vocational education students.

Changes: None.

Non-baccalaureate bound secondary students served (§§ 425.3 and 425.21)

Comment: One commenter recommended modifying §§ 425.3 and 425.21 in order to expand the student population groups to be served to include general education students in addition to vocational education students at the secondary level. The commenter pointed out that, while the integration of vocational and academic learning programs enhances learning opportunities for vocational students, general education students can gain equally or more from these integrated efforts.

Discussion: Section 420 of the Act limits the types of projects that can be funded under this program to only those that integrate vocational and academic learning. Thus, any student, including a general education student, who is enrolled in these types of projects may be served at any educational level under this program.

Changes: None.

Selection criteria—Program factors (§ 425.21(a))

Comments: Several commenters suggested that the extent to which each project will serve the populations specified in section 420(b) of the Act should reflect the fact that serving individuals who are members of special populations is mandatory and not optional.

Discussion: As discussed in response to a similar comment related to § 425.33, the Secretary does not believe that section 420(b) of the Act imposes requirements on the particular projects funded under this program, but rather it addresses overall the projects to be funded. The Secretary believes that §§ 425.3 and 425.22(a)(3) fully implement the requirements of section 420(b) of the Act.

Changes: None.

Selection criteria and evaluation requirements (§§ 425.21(b), 425.21(d), and 425.30)

Comments: Several commenters stated that the selection criteria and other requirements rely too heavily on generic language and should reflect the specific needs relating to academic-vocational integration outlined in the Act.

Discussion: The Secretary agrees that the criteria and other requirements should, as much as possible, relate to the language of the Act. Although selection criteria (b)— Educational significance—and (d)—Evaluation plan—are largely generic for all demonstration programs, both criteria contain references that are specific for the Demonstration Projects for the Integration of Vocational and Academic Learning Program. Additionally, selection criterion (a)— Program factors—includes language specifically tailored to the needs and purposes of this program.

The evaluation requirements for this program are, by intent, generic for all demonstration programs. Those requirements, for the most part, refer to how an applicant would structure a proposed evaluation rather than, for example, the specific indicators that would be used.

Changes: None.

Part 426—Cooperative Demonstration Program

Disadvantaged youths and adults (§§ 426.1 and 426.3(a)(3))

Comments: Several commenters recommended that projects to assist individuals in preparing for technical and professional health careers should serve disadvantaged adults in addition to disadvantaged youth.

Discussion: Although the Secretary agrees that disadvantaged adults could benefit from such services, the Act authorizes projects only to assist disadvantaged youth in preparing for technical and professional health careers.

Changes: None.

Part 427—Bilingual Vocational Training Program

Eligible applicants (§ 427.2)

Comments: Two commenters expressed the view that the intent of the Bilingual Vocational Training Program and the Bilingual Vocational Instructor Training Program is to improve the capacity of local educational agencies. The commenters, therefore, thought that for-profit agencies should not be eligible for contracts, but should be able to serve only as sub-contractors.

Discussion: Section 441(a)(1) of the Act specifically establishes the eligibility of "private for-profit agencies and organizations" for contracts under the Bilingual Vocational Training Program, and section 441(b)(1) establishes the eligibility of "private for-profit educational institutions" for contracts under the Bilingual Vocational Instructor Training Program.

Changes: None.

Comments: One commenter recommended that agencies that received funding under the Bilingual Vocational Training Program in the past should not be eligible to reapply for funding unless they are expanding to a new occupational area or serving a new linguistic group. In support of this position, the commenter stated that the intent of the Bilingual Vocational Training Program is to develop model programs and disseminate successful practices, not maintain programs that receive no local or State education funds. The commenter further stated that some bilingual vocational training projects have been in operation for 14 years, and, given the small budget for the activity, more institutions could be impacted if long-term commitment to a few successful sites were disallowed.

Discussion: Section 441(a)(1) of the Act establishes the Bilingual Vocational Training Program in order to provide "bilingual vocational education and training for individuals with limited English proficiency to prepare such individuals for jobs in recognized occupations and new and emerging occupations." The Secretary agrees with the commenter that recipients of grants under the Bilingual Vocational Training Program should disseminate and demonstrate their successful practices to others who could benefit from them. The selection criterion in § 427.21(g)—Demonstration and dissemination—implements this idea.

The Department's practice under this program has been to limit funding of a project to two years for each competition. However, since the Act provides no basis for ruling current or past recipients of Bilingual Vocational Training Program funds ineligible for subsequent competitions, an eligible entity can compete in any competition regardless of whether it received an earlier grant.

Changes: None.

Types of projects (§ 427.3)

Comments: One commenter requested the addition, to § 427.3 or 427.21, of a requirement similar to that in § 428.3(b) for the Bilingual Vocational Instructor Training Program. Specifically, the commenter recommended that applicants for funding under the Bilingual Vocational Training Program be required to have an ongoing vocational education program in the field in which participants will be trained and to have instructors with adequate language capabilities in a language other than English. The commenter noted that the complexity of both curriculum development and the accommodation of a new population of enrollees requires a high level of institutional readiness if a project is to be successful in the two-year time period allowed.

Discussion: The requirement this commenter wishes to add to the regulations for the Bilingual Vocational Training Program is a statutory requirement that applies only to the Bilingual Vocational Instructor Training Program and is specifically authorized by section 441(b)(3) of the Act.

Changes: None.

Selection criteria (§ 427.21)

Comments: One commenter noted that since the funding for bilingual vocational training is so limited, the Bilingual Vocational Training Program should provide seed money for bilingual vocational training and award points to projects that demonstrate the ability to continue with other sources of funding.

Discussion: Awarding points for an applicant's ability to continue a project with other sources of funding would have the advantage of giving priority to applicants with access to ongoing non-Federal funding sources. It would have the disadvantage of penalizing some community-based groups and organizations that are very skilled with bilingual vocational instruction but that lack eligibility for ongoing State and local education funding sources. The Act makes private nonprofit vocational training institutions and other nonprofit organizations, whether specially created to serve or currently serving individuals who normally use a language other than English, eligible for grants. Thus, the Secretary believes that evaluating applications using the factor suggested by the commenter would have a negative effect on the ability of some eligible entities to compete.

Changes: None.

Selection criteria—Need (§ 427.21(a))

Comments: One commenter pointed out that proposed paragraphs (2), (3), and (4) of § 427.21(a) do not seem to pertain to the need for the project. The commenter suggested that these items be moved to the selection criterion "Program factors."

Discussion: The Secretary agrees with the commenter that proposed § 427.21(a)(2), (3), and (4) would be more appropriately grouped with selection criteria other than "Need." The Secretary believes, however, that these factors would be more appropriate to the selection criterion "Plan of operation" than to the selection criterion "Program factors," as has been suggested by the commenter. Moreover, moving the items to the selection criterion "Plan of operation" would promote consistency between the format of Part 427 and the format for other education and training programs in these regulations.

Changes: Paragraphs (a) (2), (3), and (4) of proposed § 427.21 have been moved to § 427.21(b)—Plan of operation.

Comments: One commenter stated that § 427.21(a) (1) and (2) (proposed § 427.21(a)(1) (i) and (ii)) suggest a distinction between the terms "employment training need" and "labor market need" that may not exist for certain occupational fields. This commenter suggested that the regulations be changed to focus purely on "the employment need to be met," which the commenter believed combines employment training need and labor market need.

Discussion: By "employment training need," the Secretary means the need of limited English proficient individuals for employment training. By "labor market need," the Secretary means the need of employers for more persons trained to meet the current demands of the workplace. The Secretary believes that

applicants should address the need for the project from each of these two perspectives.

Changes: Section 427.21(a)(1) has been revised to clarify the meaning of "employment training need."

Comments: One commenter noted that, while bilingual vocational training projects should demonstrate collaboration with the Job Training Partnership Act (JTPA) programs and Job Opportunity Basic Skills (JOBS) programs, the JTPA standards in serving the limited English proficient trainees are vague, and placement standards for the general population are too low to be meaningful for a competitive application. The commenter believes that instead of collaborating with JTPA and JOBS, projects funded under this program should be setting new, higher standards for training the limited English proficient individuals for all agencies in the process.

Discussion: To encourage consistency, the Secretary expects projects to set goals, taking into consideration the standards and measures developed for JOBS, JTPA, and the State-Administered Vocational Education and Applied Technology Education Program. If the standards of other programs are not as high as an applicant would like, the applicant is free to establish higher standards. At the very least, the Secretary expects applicants to set goals high enough to improve the quality of training and the placement of participants.

Changes: None.

Selection criterion—Plan of operation (§ 427.21(b))

Comments: One commenter noted that the job placement rate can be supported by past records of anticipated job openings, but not by obtaining letters of job commitments from employers. The commenter explained that during this recession, especially in areas of high unemployment, it is difficult, if not impossible, to obtain letters of job commitment from employers. The commenter, therefore, requested that the term "actual employer job commitment" be changed to "employer letters of support."

Discussion: To establish the anticipated placement rate of participants, applicants may choose from among the four sources listed in § 427.21(b)(3)(ii) (proposed § 427.21(a)(4)(ii)) or may provide information from all sources. This is signaled to the applicant by the fact that the connecting word in the series of four is "or." The Secretary understands that some applicants may have a greater likelihood of placing participants than others depending on the economic conditions in the area. The Secretary wishes applicants to provide the strongest evidence they can that the participants in the project will be provided job placement in the occupation for which they are to be trained.

Changes: None.

Selection criteria—Demonstration and dissemination (§ 427.21(g))

Comments: One commenter thought that the specificity of § 427.21(g)—Demonstration and dissemination—is very constricting. To encourage demonstration and dissemination plans that are more project-specific, the commenter suggested deleting § 427.21(g) (1) through (5).

Another commenter opposed the provisions in § 427.21(g)(2), basing the opposition on several factors, among them, that the Bilingual Vocational Training Program was intended for the direct delivery of training and services; that providing the required demonstration and dissemination activities would result in a reduction in the human and financial resources that projects now devote exclusively to the primary missions of training and placement; and that accomplishing the demonstration and dissemination activities would require hiring a different and higher salaried staff capable of producing professional papers for national conferences and meetings.

Finally, the commenter opposed this selection criterion because the commenter did not believe that covering the costs of travel, mailing, duplicating, and rental of audio-video equipment at conference sites was anticipated in the legal requirements for the use of funds described in § 427.3. This commenter believed the regulations should limit the requirements for demonstration and dissemination activities to the local level and to community-based organizations rather than encourage activities at the State or national levels.

Discussion: Eliminating § 427.21(g) (1) through (5) would have the advantage of permitting applicants to devise their demonstration and dissemination plans as narrowly as they chose in relation to the specific language groups being served, specific types of institutions providing bilingual vocational training programs, and geographic boundaries within which these services would be provided. It would have the disadvantage of failing to convey the Secretary's expectations that the results of projects are to be broadly disseminated and demonstrated and made available without regard to types of institutions or geographic boundaries, and that the dissemination and demonstration activities are to be evaluated. The Secretary wishes these factors to influence the applicant's program design, management plan, and budget. The Secretary believes that applicants have been given broad latitude in shaping and describing the project-specific types of materials that will be disseminated, and the Secretary encourages applicants' creativity in shaping the methods and procedures that each applicant will use for helping others replicate successful practices.

The Secretary believes that, when a bilingual vocational training model is successfully disseminated and demonstrated, other vocational education and training programs across the country serving the limited English proficient can also increase their level of success. Demonstration and dissemination activities can multiply the effect of this program by providing information to service providers that have broad access to other sources of funding, such as the State-Administered Vocational and Applied Technology Education Program.

Changes: None.

Duration of projects

Comments: One commenter believed that projects under the Bilingual Training Program should be funded for a three-year period with a yearly non-competitive review to ensure attainment of stated objectives and placement rate. This commenter believed that a three-year funding period is justified by the new dissemination and impact objectives that the Secretary has built into the regulations.

Discussion: The Secretary announces in the **Federal Register** the expected duration of projects in any notice requesting applications. Implementing the commenter's suggestion would not require a change in these regulations.

Changes: None.

Part 428—Bilingual Vocational Instructor Training Program

Purpose of program (§ 428.1)

Comments: Several commenters pointed out that § 428.1 excluded secondary vocational instructors from participation in the Bilingual Vocational Instructor Training Program. These commenters considered it essential that the regulations be changed to permit the participation of secondary vocational instructors. Other commenters expressed support for restricting the use of training funds to individuals instructing out-of-school youth and adults.

Discussion: As proposed, § 428.1 would have limited training under the Bilingual Vocational Instructor Training

Program to personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. The proposed regulations were intended to reinforce the traditional link between the Bilingual Vocational Instructor Training Program and the Bilingual Vocational Training Program that is limited by law to training "limited English proficient out-of-school youth and adults."

While limiting the Bilingual Vocational Instructor Training Program in this way has the advantage of reinforcing and strengthening the Bilingual Vocational Training Program, it has the disadvantage of slowing the pace with which secondary vocational education institutions adopt the highly successful bilingual vocational training models developed under the Bilingual Vocational Instructor Training Program. It also has the disadvantage of giving local agencies and institutions less flexibility to use Federal funds to address locally-defined educational needs.

Changes: Sections 428.1, 428.3(a)(1), 428.10(h), 428.21(a)(2), 428.21(b)(1) (i) and (iii), and 428.21(b)(2) have been revised to authorize the training of secondary vocational instructors in training projects supported under the Bilingual Vocational Instructor Training Program.

Types of projects (§ 428.3(b))

Comments: One commenter observed that the requirement for an "ongoing vocational education program in the field in which participants will be trained" is not relevant to inservice programs and should only apply to preservice programs that train vocational teachers or aides. The commenter stated that, in the case of inservice training, trainees will already be skilled as either vocational or English language instructors or counselors. The commenter suggested that § 428.3(b) be revised so that it applies only to preservice training programs and requires institutions providing inservice training programs to have an ongoing program or expertise in bilingual vocational, bilingual/multicultural, or adult ESL teacher training.

Discussion: Section 441(b)(3) of the Act, on which § 428.3(b) is based, does not differentiate between preservice and inservice training programs in requiring the applicant to have "an ongoing vocational training program in the field in which participants will be trained and [to] provide instructors with adequate language capabilities in the language other than English to be used in the program."

Changes: None.

Selection criteria—Evaluation plan (§ 428.21(f)(3))

Comments: Several commenters interpreted § 428.21(f)(3) as requiring participating institutions to provide data on completion and after-training work commitments of students. The commenters recommended that this selection criterion be changed to read: "provide data on performance and performance standards" in order to accommodate secondary school students.

Discussion: The Secretary intends that agencies and institutions receiving grants to train bilingual vocational training instructors will provide data on the "after-training work commitments" of those instructors, not the students of the instructors. The Secretary hopes that the instructors, of both secondary school students and out-of-school youth and adults, will report that their after-training work commitments include the direct vocational training of limited English proficient individuals, the training of other instructors for this purpose, or both. Changing the selection criterion would have the effect of placing more emphasis on the quality of "inputs" to the training program and less emphasis on the program's "outcomes." The Secretary prefers the current balance between these two factors.

Changes: None.

Comments: One commenter stated that the selection criterion "evaluation plan" should apply only to preservice training programs. The commenter expressed the view that trainees in inservice training programs are already employed and that, therefore, after-training work commitments would not change. The commenter also believed that since few inservice programs involve courses, completion data do not apply.

Discussion: The Secretary does not agree with the commenter that all individuals enrolled in inservice training programs may be presumed to be already employed in bilingual vocational training. The Secretary believes that some participants in inservice training programs may be employed in vocational education or counseling programs that presume the enrollees or clients already have an English language capability. By the regulation as written, the Secretary wishes to know whether these enrollees will be making a transition into bilingual vocational training programs.

The Secretary also disagrees with the commenter that since few inservice programs involve courses, completion data do not apply. The Secretary recognizes that preservice and inservice training programs differ. Therefore, § 428.21(f)(4) provides flexibility for applicants to identify expected learning and skills outcomes for participants and how those outcomes will be measured. The Secretary expects inservice projects to report on completions in terms of the number of enrollees who acquired the learning and skills expected rather than on courses completed.

Changes: None.

General

Selection criteria—Evaluation plan and evaluation requirements (§§ 405.21(d), 405.30, 425.21(d), and 425.30)

Comments: One commenter noted that the technical expertise and time required for a valid evaluation requires project research and evaluation staff working in concert with project implementation staff across the entire funding period. The commenter requested that the Secretary place an emphasis on fully funding costs related to research and evaluation personnel and materials as these costs are not only "reasonable and necessary" but critical for meeting increased accountability.

Discussion: The Secretary believes that it is prudent and fair to communicate expectations for rigorous evaluation designs and program accountability measures to potential applicants before they write applications for funding. The Secretary expects that advance knowledge of the additional requirements will influence not only how applicants plan and manage their projects, but how they propose to budget grant funds in their applications.

Changes: None.

Evaluation requirements (§§ 405.30 and 425.30)

Comment: One commenter noted that evaluative data are required for demonstration programs (including those covered by Parts 405 and 425) that include "information regarding student achievement, completion, and placement rates." The commenter expressed a concern that it is difficult, particularly in the early stages of a project, to delineate clearly a "cause and effect" relationship. The commenter, therefore, recommended that other data, including product availability and use, attendance rates, suspension rates, and attitudinal changes, also be taken into account.

Discussion: The Secretary recognizes the difficulty of establishing a "cause and effect" relationship during the early stages of a project. However, the requirement to base the evaluation on student achievement, completion, and placement rates is to be met over the

course of the project, not just during the early stages of a project. Although projects are free to gather evaluative data other than those specified in the regulations, the Secretary expects a project's evaluative data to include the information specified in §§ 405.30 and 425.30.

Changes: None.

The information collection requirements contained in this appendix will be submitted to the Office of Management and Budget for approval at which time the public will have an opportunity to comment on them pursuant to the Paperwork Reduction Act.

Appendix B—Reporting Requirements

Recipients of grants and cooperative agreements will be required to provide the following information in accordance with 34 CFR 400.10:

(a) Each recipient of an award under the National TechPrep Education Program (34 CFR part 405), Community Education Employment Centers Program (34 CFR part 408), Vocational Education Lighthouse Schools Program (34 CFR part 409), Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415), Vocational Education Dropout Prevention Program (34 CFR part 423), Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424), Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425), and Cooperative Demonstration Programs (34 CFR part 426) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing project activities for the reporting period; and

(2) Include as appendices to the annual performance report, as appropriate—

(i) Quantitative analyses of data and information regarding student achievement, completion, and placement rates;

(ii) Quantitative analyses of data and information regarding project and product spread and transportability as defined in 34 CFR 400.4(b);

(iii) Copies of "awareness" level materials being distributed about the project;

(iv) Copies of materials related to training used to help others replicate project activities;

(v) Copies of instructional, classroom, or curriculum materials that can be submitted to appropriate dissemination networks such as the National Network for Curriculum Coordination in Vocational and Technical Education and the Clearinghouse on Adult, Career, and Vocational Education of the Educational Resources Information Center;

(vi) A directory of individuals to whom training or technical assistance has been provided to replicate project activities; and

(vii) Demographic and evaluation data from sites where project activities have been replicated.

(b) Each recipient of an award under the Community Education Employment Centers Program (34 CFR part 408) shall also include as an appendix to the annual and final performance reports information documenting activities required in 34 CFR 408.34.

(c) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401), Native Hawaiian Vocational Education Program (34 CFR part 402), Educational Program for Federal Correctional Institutions (34 CFR part 422), and Bilingual Vocational Training Program (34 CFR part 427) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate those barriers; and

(2) Submit to the Secretary a semi-annual statistical report covering quantitative analyses of the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the program.

(d) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix, quantitative analyses of data and information regarding—

(1) Student enrollment, completion, and placement rates for the most recently completed training cycle(s), by sex and by occupations for which training is being provided; and

(2) Project referrals to social services and related services for participant employment readiness.

(e) Each recipient of an award under the Native Hawaiian Vocational Education Program (34 CFR part 402) shall—

(1) Include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of student enrollment, completion, and placement for the most recently completed training cycle(s), by sex and socio-economic status for each occupation for which training is being provided; and

(2) Submit to the Secretary an annual evaluation report that must include descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on—

(i) The academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Participant enrollment, completion, and placement by sex, and socio-economic status for each occupation for which training has been provided.

(f) Each recipient of an award under the Educational Program for Federal Correctional Institutions (34 CFR part 422) shall include in the semi-annual performance report described in paragraph (c)(1) of this appendix quantitative analyses of data and information regarding—

(1) Student enrollment and completion rates by sex, ethnic or racial group, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Project referrals to pre and post release services for employment enhancement.

(g) Each recipient of an award under the Bilingual Vocational Training Program (34 CFR part 427) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of—

(1) Student enrollments, completions, and placements for the most recently completed training cycle by sex, ethnic or racial group, socioeconomic status, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Data and information regarding activities to enhance project operations such as coordination activities, training or upgrading of personnel, and the provision of support services.

(h) Each recipient of an award under the Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410) shall—

(1) Submit the following to the Secretary:

(i) On an annual basis, an accurate and detailed accounting of its operating and maintenance expenses, and other information concerning costs as the Secretary may require.

(ii) Information in the detail as the Secretary may require to prepare a budget needs estimate to support each institution's subsequent year of operation including updated information on employment needs, economic

development needs, and population training needs.

(iii) Any information the Secretary may require to determine the feasibility of awarding additional grants to pay training equipment costs necessary for implementing training programs.

(2) Participate in the study of training and housing needs authorized by section 389(a) of the Act, and the long-term study of facilities authorized by section 389(b) of the Act, including providing information on—

(i) Training equipment needs;

(ii) Housing needs of families whose heads of household are students and whose dependents have no alternative source of support while those heads of household are students; and

(iii) A five year projection of training facilities, equipment, and housing needs, projected service population, and employment and economic development projections.

(i) Each recipient of an award under the National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412) shall submit to the Secretary—

(1) Semi-annual progress reports summarizing project activities for the reporting period;

(2) Semi-annual financial reports summarizing project spending for the reporting period; and

(3) An annual impact report of the curriculum coordination center's activities. The report must highlight the CCC's services and the program improvement practices resulting from these services. This report is due on December 31 of each year of the award.

(j) Each recipient of an award under the National Center or Centers for Research in Vocational Education (34 CFR part 413) shall submit to the Secretary the following:

(1) Monthly exception reports that describe—

(i) Any problems, delays, or adverse conditions that materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments that will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(2) Semi-annual performance reports, unless the Secretary requires more frequent reporting, that describe the progress, problems, and future plans for each significant activity of the National Center within 30 days of the end of each six months.

(3) Quarterly financial status reports within 30 days of the end of each quarter. The annual financial status report may be submitted in place of the quarterly financial status report for the fourth quarter of each year.

(4) Ten copies of all substantive reports and products produced.

(k) Each recipient of an award under the Vocational Education Training and Study Grants Program (34 CFR part 416) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing project activities for the reporting period and, if applicable, actions taken by the grantee to address any significant barriers impeding progress; and

(2) Append to the annual performance report an evaluation report that includes both statistical tables and narrative responding to the key evaluation questions in 34 CFR 416.21(f).

(l) Each institution receiving an award under the Vocational Education Leadership Development Awards Program (34 CFR part 417) shall—

(1) Provide to the Secretary, prior to disbursing awards, a certification from an appropriate official at the institution stating whether each proposed recipient of a leadership development award qualifies for the award based on the requirements in 34 CFR 417.34(a);

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of awards;

(3) Keep records verifying that recipients of leadership development awards—

(i) Meet the requirements in 34 CFR 417.40; and

(ii) Receive an award for no more than three years;

(4) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them; and

(5) Submit to the Secretary a semi-annual statistical report covering quantitative analyses, by sex and racial or ethnic groups, of—

(i) Level and duration of learner participation and degree of progress;

(ii) Level of graduate study;

(iii) Institution and program in which enrolled;

(iv) The categories of personnel named in 34 CFR 417.1; and

(v) State from which the participant was selected.

(m) Each institution of higher education participating under the Vocational Educator Training Fellowship Program (34 CFR part 418) shall—

(1) Provide to the Secretary, prior to disbursing funds to a fellow, a certification from an appropriate official at the institution stating whether each proposed recipient of a fellowship meets the requirements in 34 CFR 418.41;

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of fellowship payments; and

(3) Keep records verifying that each fellow—

(i) Meets the requirements in 34 CFR 418.2; and

(ii) Receives a fellowship for no more than two years.

(n) Each agency or organization sponsoring an intern under the Internships for Gifted and Talented Vocational Education Student Program (34 CFR part 419) shall submit to the Secretary two copies of a mid-term and final report summarizing the intern's activities and progress achieved in meeting the goals of the internship.

(o) Each recipient of an award under the Bilingual Vocational Instructor Training Program (34 CFR part 428) shall submit to the Secretary—

(1) A semi-annual performance report, unless the Secretary requires more frequent reporting, summarizing significant and project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them;

(2) A semi-annual statistical report of learner participation in instructor training in terms of enrollment, completion, and after-training work commitments of participants by sex and racial or ethnic group and, where appropriate, by level and kinds of language proficiency; and

(3) An annual report on the results of the evaluation to answer the key questions raised in 34 CFR 428.21(f).

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Part IV

Environmental Protection Agency

40 CFR Part 261

Deferral of Petroleum UST-Contaminated Media and Debris From RCRA Hazardous Waste Requirements: Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-4194-2]

Deferral of Petroleum UST-Contaminated Media and Debris From RCRA Hazardous Waste Requirements: Notice of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a notice describing several studies which the Agency has completed concerning the temporary deferral from the hazardous waste Toxicity Characteristics (TC) rule of petroleum-contaminated media and debris from underground storage tanks (USTs). Since the temporary deferral was published on March 29, 1990, EPA has conducted several studies and held meetings with interested members of the public regarding the temporary deferral and the anticipated effects of regulating UST petroleum-contaminated media and debris as hazardous wastes under Subtitle C of the Resource Conservation and Recovery Act (RCRA). This notice summarizes the findings of the studies and the results of the public meetings. These materials will be used by the Agency to make a final determination regarding the hazardous waste regulatory status of petroleum UST-contaminated media and debris. EPA encourages public review and comment on these materials.

DATES: Written comments on these materials must be submitted on or before September 28, 1992.

ADDRESSES: Written comments on the materials described in today's notice should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS-305), 401 M Street, S.W., Washington, DC 20460. One original and two copies of comments should be sent and identified by regulatory docket reference number F-92-DPUA-FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260-9327. Copies of docket materials may be made at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, please contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 260-3000 (local). For the hearing impaired, the number is (800) 553-7672 (toll-free), or (202) 260-9652 (local). For specific information about the studies and meetings described in this notice or about the UST deferral, please contact John Heffelfinger in the EPA Office of Underground Storage Tanks at (703) 308-8881.

SUPPLEMENTARY INFORMATION:

I. Background

A. Toxicity Characteristics Rule

The Toxicity Characteristics (TC) rule for identifying hazardous wastes was promulgated by the Agency on March 29, 1990 (55 Fed. Reg. 11798) and became effective on September 25, 1990. The rule replaced the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP), added 25 organic chemicals to the list of toxic constituents of concern, and established regulatory levels for these organic chemicals.

The overall effect of the TC rule was to subject additional solid wastes to regulatory control under the hazardous waste provisions of Subtitle C of RCRA. Under this rule, a waste may be a hazardous waste if any chemicals listed in the rule, such as benzene, are present in leachate from the waste (generated from use of the TCLP) at or above the specified regulatory levels. Management of such hazardous waste is subject to stringent RCRA Subtitle C controls.

B. The UST Deferral

Among the wastes that could be TC wastes are petroleum-contaminated media and debris. At the time of promulgation of the final TC rule, the Agency made a determination to temporarily defer applicability of the TC rule to media and debris (*e.g.* soils and groundwater) contaminated with petroleum from underground storage tanks (USTs) that are subject to the corrective action requirements of Subtitle I of RCRA. 55 FR 11836 (March 29, 1990). The deferral was limited to the 25 newly listed organic chemicals under the TC (i.e. Hazardous Waste Codes D018 through D043 only). *See* 40 CFR 261.4(b)(10).

The deferral was the result of several factors. Because the potential impact of the TC on materials generated from UST cleanups did not become apparent until very late in the rulemaking process, at the time of promulgation of the final TC rule, the Agency had little information regarding the full impact of the TC rule on UST cleanups, particularly regarding the amount of contaminated media that would become hazardous waste and the type of management feasible and appropriate for such waste. However, available information suggested that the impact of applying Subtitle C to UST cleanups might be severe in terms of the administrative feasibility of both the Subtitle C and Subtitle I programs. A preliminary assessment indicated that the number of UST cleanup sites and the amount of media and debris at each site that would exhibit the toxicity characteristic could be extremely high, with EPA expecting hundreds of thousands of UST releases to be identified in the next few years. The Agency believed that subjecting all, or even a significant portion, of these sites to Subtitle C requirements could overwhelm the hazardous waste permitting program and the capacity of existing hazardous waste treatment, storage, and disposal facilities.

In addition, EPA believed that imposition of the requirements could delay UST cleanups significantly, require an enormous new commitment of Federal and State resources, and undermine the State and local focus of the UST program. All of these factors suggested that EPA needed additional time to determine with more certainty what the impacts of the TC would be on UST cleanups before subjecting such materials to hazardous waste requirements. In addition, EPA needed time to investigate whether regulatory changes could be made to the RCRA Subtitle C regulations to allow appropriate integration of the two programs. EPA also believed that the UST regulations governing cleanups at these sites would be adequate to protect human health and the environment in the interim, until a final determination was made regarding the regulation of UST wastes.

In the preamble explaining the need for the deferral, EPA committed to undertaking several studies and meetings in order to make a final determination concerning the regulation of these UST wastes under the Subtitle C program. The studies and meetings described below are those that EPA agreed to undertake in the 1990 TC rule. The information that EPA is making available to the public today for review and comment will provide key inputs into EPA's final determination regarding the permanent regulatory status of UST petroleum-contaminated media and debris as hazardous waste under RCRA Subtitle C.

II. EPA's Studies

As explained above, the application of the TC rule to UST cleanups was temporarily deferred to allow cleanups under the UST program to proceed while the Agency evaluated the extent and nature of the potential impacts of Subtitle C requirements if applied to the UST program and the feasibility of regulatory alternatives for program integration. In fulfillment of the commitment the Agency made in the preamble to the final TC rule, EPA has completed studies that will be used as key inputs to the final determination regarding the regulation of petroleum UST-contaminated media and debris as hazardous waste. These studies are available for review in the docket for this notice and are briefly described below.

A. Technical Study

The Agency is making available today for public comment a draft report entitled "TC Study of Petroleum Contaminated Media." This report is organized as follows:

- Estimates of the amounts of UST petroleum-contaminated soils that might be expected to exhibit the hazardous waste characteristic of toxicity if subject to the TCLP test;
- Impacts on hazardous waste capacity nationwide if these materials required management as hazardous waste;
- State management practices for petroleum-contaminated soils from USTs;
- Overview of technologies currently used for management of petroleum-contaminated soils and groundwater; and
- Impacts on the RCRA Subtitle I and C programs of removing the temporary deferral.

B. Impacts Study

The Agency is also making available today for public comment a draft report entitled "The Impacts of Removing the TCLP Deferral for Petroleum-Contaminated Media at Underground Storage Tanks Sites." This report is organized as follows:

- Procedural impacts of removing the deferral with regard to changes that would be required in cleanup procedures, technologies and the pace of UST corrective actions;
- Cost impacts of removing the deferral, to the regulated community as well as to EPA and the States; and
- Preliminary assessment of health risk impacts associated with removing the temporary deferral.

C. Study Findings

The findings of these two reports corroborate the preliminary assessment that EPA made at the time of promulgation of the temporary deferral. Specifically, the findings of the two studies indicate that removing the TC deferral would significantly affect UST cleanup procedures, delay remedial actions, and increase soil remediation costs. Further, delays in site remediation caused by compliance with Subtitle C requirements could increase health and environmental risks prior to cleanup.

In addition to findings concerning the impacts of removing the deferral, these studies also indicate that many States have programs in place to regulate the management of UST petroleum-contaminated media and debris. The vast majority of these State programs address in some manner the entire cycle of UST petroleum-contaminated soils and groundwater management, from initial characterization through storage and ultimate treatment or disposal.

EPA is interested in any comments that the public may have on the content of these studies and in the use of these studies to support a final determination concerning the regulation of UST petroleum-contaminated media and debris as hazardous waste.

III. Public Meetings

In the preamble to the 1990 TC rule, EPA also stated its intention to convene a public forum to discuss the issues associated with regulating UST petroleum-contaminated soils and debris under Subtitle C of RCRA. To fulfill this commitment, in September and December, 1991, EPA convened several meetings with various interested parties (including representatives from the States, Congressional staff, environmental groups and the waste treatment and waste generating industries) to discuss issues related to the cleanup of petroleum contamination from UST at well as non-UST sources, and the potential impacts of the TC rule on these cleanups.

The thirteen States attending these meetings expressed significant concern about the adverse environmental impacts resulting from the application of the TC rule to petroleum UST releases. In the view of many States, the delays associated with RCRA Subtitle C management would allow for volatilization and migration of certain TC constituents, such as benzene prior to cleanup. Groups representing the waste generating industries generally agreed with the States, although several stated that this problem was not unique to petroleum-contaminated media.

Representatives of environmental groups and certain members of the hazardous waste treatment industry expressed concerns with the deferral as a mechanism for solving the implementation problems posed by Subtitle C regulation of petroleum-contaminated media and debris. They suggested that EPA consider modifying the hazardous waste requirements to accommodate these cleanup wastes rather than exempting the wastes entirely from important procedural and substantive hazardous waste requirements.

A complete summary of these meetings is in the docket for this action. The various viewpoints expressed in these meetings will be considered as part of EPA's final decisionmaking concerning the deferral.

IV. Schedule for Final Determination

EPA will review and evaluate the public comments on the studies and meetings described in this notice as part of its decisionmaking concerning the regulatory status of UST petroleum-contaminated media and debris. The Agency also expects to publish later this year another notice addressing the regulatory status of UST petroleum-contaminated media and debris. That notice will include EPA's evaluation of whether and how the Subtitle C regulations can be amended to accommodate the UST wastes and avoid the administrative and environmental problems associated with regulation of UST wastes as hazardous that are noted above and were discussed in the preamble to the 1990 TC final rule.

Following review of all the public comments submitted on these notices, EPA plans to publish a final determination that will terminate the temporary deferral (codified at 40 CFR 261.4(b)(10)), permanently exempt UST petroleum-contaminated media and debris from the TC, or take some other regulatory action concerning the applicability of hazardous waste requirements to these cleanup wastes. EPA currently expects to publish this determination in the **Federal Register** by March 31, 1993.

Dated: July 23, 1992.

Don R. Clay,

Assistant Administrator.

[FR Doc. 92–19184 Filed 8–13–92; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
August 14, 1992

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Supplemental Assistance for Facilities to Assist the Homeless (SAFAH); Fund Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3478; FR-3196-N-01]

Supplemental Assistance for Facilities To Assist the Homeless (SAFAH); Fund Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: This Notice announces the availability of $10.4 million in funds for assistance under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program. The purpose of this year's SAFAH competition is to test integrated approaches that involve partnerships of State and local governments and private nonprofit organizations, and that are designed to prevent the recurrence of homelessness among homeless families with children graduating from transitional housing. Grants will be available to fund activities related to helping families locate and secure permanent housing (*e.g.*, housing search and housing counseling activities, first and last months' rent, moving expenses), and to providing case management services for up to a year after families secure permanent housing.

Grantees are expected to ensure that families served have access to a range of needed supportive services by incorporating local collaboration mechanisms in the planning and delivery of services for participant families. This coordinating activity must be funded through other sources. HUD will give special consideration to applications that demonstrate linkages with HHS' Homeless Families Support Center grants or other similar collaborative efforts aimed at maximizing supportive service resources available to participant families.

The body of this document contains additional information on the focus of this year's SAFAH program, eligible activities, and selection criteria.

DATES: Applications for SAFAH assistance must be received by 5:15 pm Eastern Time on December 15, 1992 in HUD's Office of Special Needs Assistance Programs at the address listed below.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: Application packages are available from the HUD field offices listed at the end of this Notice. Additional information regarding the submission of applications is included in the package.

ADDRESSES: An original and one copy of the completed application must be submitted to the following address: Department of Housing and Urban Development, Office of Community Planning and Development, Special Needs Assistance Programs, room 7262, 451 Seventh Street SW., Washington, DC 20410, Attention: Mr. James N. Forsberg.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300 or TDD (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0111, expiration date December 31, 1992.

I. Purpose and Substantive Description

A. Authority

The assistance made available under this Notice is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11381–11388), as implemented by HUD regulations at 24 CFR part 579 and supplemented by this Notice, and as amended by sections 106, 834(c), and 836 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990).

B. Allocation Amounts

This Notice announces the availability of $10.4 million in funds appropriated by the HUD appropriations act for fiscal year 1992 (Pub. L. 102–139, enacted October 28, 1991). The maximum amount that a State may receive is $1 million, including amounts requested for grant administration costs, to be used over a three-year period. HUD reserves the right, however, to reduce the amounts requested by an individual applicant. The Department expects to award 12–14 grants.

C. Eligibility

1. Purpose

The purpose of this year's SAFAH competition is to test integrated approaches that involve partnerships of State and local governments and private nonprofit organizations, and that are designed to prevent the recurrence of homelessness among homeless families with children graduating from transitional housing by: (1) Assisting such families in locating and securing permanent housing, and (2) providing case management services that establish linkages with health care, supportive services, income assistance, and longer-term supportive services essential to these families' efforts to achieve the highest level of self-sufficiency possible after moving to permanent housing.

Unlike the past SAFAH funding rounds, this year's SAFAH competition will not fund activities other than case management activities and assistance to families in locating and securing permanent housing. This change has been made so that the program's limited resources will be directed to activities that the Department considers essential for linking families with necessary services available through community-based programs. This year's competition, therefore, emphasizes collaboration involving key local and private nonprofit organizations to help ensure that necessary services are available.

2. Background

In January, 1990, the Secretaries of the Departments of Housing and Urban Development and Health and Human Services signed a Memorandum of Understanding (MOU) committing the Departments to develop and implement cooperative efforts to help homeless persons or persons at risk of homelessness move toward economic independence and self-sufficiency. One of the initiatives resulting from this MOU was the creation of an interagency working group on homeless families with children to design strategies that encourage the development of accessible supportive service and housing assistance systems to prevent homeless families with children from becoming homeless again. The working group initially took steps to improve its understanding of the needs of homeless families and to determine the best way to provide services to meet identified needs.

Studies such as Homeless Families with Children: Programmatic Responses of Five Communities by Macro Systems, Inc. and Families on the Move: Breaking the Cycle of Homelessness by The Edna McConnell Clark Foundation highlight the fact that programs serving homeless families often are characterized by weak linkages between service and housing agencies and by the lack of follow-up services necessary to ensure that families who are relocated to permanent

housing are able to maintain their housing. Recent studies of family homelessness in the Bay Area of California and New York City indicate that 44 and 50 percent of homeless families, respectively, had been homeless more than once. The need for follow-up services and more effective linkages to public and charitable mainstream programs to help to prevent repeated homelessness is clearly supported by recent studies, and is a point about which a wide array of public and private service providers, policy makers, and others agree.

This announcement responds to the working group's recommendation to support efforts that integrate services and housing intended to prevent the recurrence of homelessness. In selecting applications, the Department will give special consideration to applications that link SAFAH assistance with other efforts to integrate services available to families with children, such as HHS' Homeless Family Support Center sites, Family Self-Sufficiency programs developed by Public Housing Authorities, the HUD-Robert Wood Johnson Foundation Homeless Families Program, or other local collaboration efforts.

3. Eligible Applicants

State governments are the only eligible applicants. States may submit only one application, but may include more than one local jurisdiction in the application and may identify more than one transitional housing facility within each local jurisdiction. States are expected to collaborate with local governments and private nonprofit organizations in the planning and implementation of the projects. States are expected to solicit interest in the program from local governments and, especially, private nonprofit organizations.

4. Program Components

In this year's SAFAH competition, HUD is seeking to fund programs that contain the following major components:

(1) Evidence of collaboration between state and local governments and private nonprofit organizations within each local jurisdiction to coordinate the delivery of supportive services to families who have moved from transitional into permanent housing. This system should ensure that services necessary for families to achieve and sustain the highest level of self-sufficiency possible are available to families who have relocated to permanent housing, minimize the burden to families associated with accessing multiple service systems, and reduce duplication of effort by local agencies. This collaboration may include new activities or linkages with existing collaborative efforts that target similar populations, such as those by HHS' Homeless Family Support Center grantees, Family Self-Sufficiency programs developed by Public Housing Authorities, the HUD-Robert Wood Johnson Foundation Homeless Families Program, or other local collaborative efforts. States also are encouraged to target resources to the development and continuance of this activity.

Examples of organizations that might be partners in this collaboration effort include:

—Head Start agencies
—County health departments
—Public or voluntary coalition/coordinating groups on homelessness
—Community action agencies
—Local education agencies
—Institutions of higher education
—Public hospitals
—Community development corporations
—Private industry councils
—Community health centers
—Public housing agencies (PHAs)
—Other public or private nonprofit organizations specializing in provision of social services

A local collaboration mechanism is essential to receive SAFAH assistance for the activities specified in the (2) and (3). SAFAH assistance, however, may not be used to fund the collaboration efforts.

(2) The provision of housing-related activities to help families graduating from transitional housing to locate, secure, and move into permanent housing. Families graduating from transitional housing are those who have been determined ready to move to permanent housing after completing a transitional housing program designed to prepare the family for independent living. A program is considered transitional housing if it includes, at a minimum, an intensive assessment to identify the needs of the family; the provision or direct linkage to a comprehensive range of services to address those needs, such as basic life skills training, education, employment-related activity, child care, and health care; and periodic assessment of the family's progress in meeting identified needs. A program that meets these standards, regardless of whether it is formally referred to as transitional housing, may be considered transitional housing for purposes of this notice.

Housing-related activities eligible for SAFAH assistance include, but are not limited to:

—Housing counseling and housing search assistance (including fair housing counseling and assistance for families with children that encounter housing discrimination)
—Linkage to housing subsidy mechanisms
—Security deposits
—First and last months' rents (but not ongoing rental assistance)
—Payment of housing-related arrearages to assist the family to move from transitional to permanent housing if the arrearages directly contributed to the family's homelessness and are necessary to allow the family to move to permanent housing
—Moving expenses
—Furnishings

States and local jurisdictions are encouraged to provide subsidies or other housing resources, which will count as leveraging, to assist in the implementation of projects in one or more localities.

(3) A family case manager function, integrated with the collaboration described in paragraph (1), which ensures, either directly or through relationships with existing service providers, that families who have moved to permanent housing have access to services, funded from other sources, that meet identified needs for benefits and services. This should include conducting individualized needs assessments to identify services that will complement those provided in transitional housing and helping families secure needed services from a community-based service system.

The services, which are to be funded from other sources, may include:

—Health and mental health services
—Food and nutrition programs
—Family crisis counseling
—Drug and alcohol counseling
—Child development programs
—Child care
—Job training and education
—Parenting classes
—Programs for young adults and teens
—Other services necessary to achieve independent living and the highest level of self-sufficiency possible to prevent the recurrence of homelessness

The SAFAH program will fund up to twelve months of family case management services after the family relocates to permanent housing. SAFAH funds may not be used for supportive services other than housing-related activities and case management, as described in paragraphs (2) and (3).

(4) A plan for tracking and reporting on the progress of families served in

order to measure program effectiveness. Expected outcomes include:

—Prevention of future homelessness
—Improvement of the physical, social, economic, and education status of participant families
—Achievement of progress toward independence and self-sufficiency
—An increase in literacy levels and basic employment skills

Grantees will be expected to track and report on the progress of families for an additional year following the completion of SAFAH-funded family case management services. This activity may be funded from the five percent of the SAFAH assistance eligible to be used for grant administration. In addition to costs related to tracking clients and costs associated with preparing reports for submission to HUD, grant administration includes costs associated with accounting for the use of grant funds, obtaining program audits, and other similar costs. If administrative funds remain after the end of the third year of the grant, they may be used to fund costs associated with tracking and reporting on clients in the year following that third year.

The Department may contract for an independent evaluation of the program. Grantees will be expected to cooperate with such third-party evaluation contractors, including cooperating in the collection and submission of data to the contractor and in other activities necessary to ensure an effective evaluation.

D. Comprehensive Housing Affordability Strategy

An applicant must submit a certification with its application that the proposed activities are consistent with its Comprehensive Housing Affordability Strategy (CHAS), in accordance with 24 CFR part 91. If an applicant has not yet submitted this CHAS for fiscal year 1993, the certification of consistency may be made with respect to the CHAS for fiscal year 1992. (See 24 CFR 91.80.)

E. Threshold Review

The selection process for the SAFAH program includes an initial technical threshold review to determine whether applications are eligible for ranking under the rating criteria discussed in Section F of this notice. The threshold review will determine (1) whether the application is adequate in form, timeliness, and completeness; (2) whether the applicant and the population to be served are eligible; (3) whether the proposed activities are eligible for assistance under the program; and (4) whether the applicant is in compliance with the civil rights requirements in 24 CFR 579.325(a).

F. Rating Criteria

Applications that meet the threshold review requirements described in Section E will be rated and ranked, with a maximum of 1,000 points, based on four criteria. Since all applications must be targeted to homeless families with children, applications will not be rated on the criterion found at 24 CFR 579.215(b)(4), Special homeless populations. To be eligible for an award, applicants must receive points under the comprehensiveness, innovation, and cost effectiveness criteria, but need not receive points under the leveraging criteria. The selection of proposals will be based on their overall score. If the application includes more than one local jurisdiction, the selection criteria will be applied to the application as a whole, rather than separately to each local jurisdiction.

1. Comprehensiveness (700 points)

(1) Housing assistance (250 points)—HUD will award up to 250 points based on the extent to which the applicant proposes a housing package that will improve families' access to permanent affordable housing in the community. In assessing an application under this criterion, HUD will consider the extent to which: (a) all necessary housing-related activities are provided through SAFAH assistance or other sources; (b) there are demonstrated commitments that ensure that permanent, affordable housing is available to participant families; and (c) the background and experience of the agencies and staff that will provide housing-related activities demonstrate the ability to provide the proposed housing services effectively and efficiently.

(2) Supportive services (200 points)—HUD will award up to 200 points based on the extent to which necessary supportive services (excluding case management, which is considered under "coordinated service delivery") will be provided. In assessing an application under this criterion, HUD will consider the extent to which the applicant: (a) Demonstrates an understanding of the needs of the target population; (b) proposes services that will complement those provided in transitional housing and help families achieve and sustain the highest level of self-sufficiency possible; and (c) provides commitments that ensure that the services will be readily accessible to participant families.

(3) Coordinated service delivery (250 points)—HUD will award up to 250 points based on the extent to which the housing assistance and supportive services described above will be provided in coordinated manner through the effective use of case management linked with a collaborative mechanism involving state and local governments and private nonprofit providers.

Case management will be assessed based on the extend to which: (a) The case management model proposed reflects a sound understanding of the needs of the target population; (b) a workable plan is proposed to ensure that families are assisted in accessing needed benefits and services; and (c) the background and experience of project staff demonstrate the ability to provide the proposed case management services in an effective and efficient manner.

The project's collaborative mechanism will be assessed based on the extent to which it: (a) Includes state and local government agencies and nonprofit providers capable of targeting and pooling their resources so that benefits and services will be available to project clients when needed; (b) incorporates activities to reduce duplication of effort in accessing benefits and otherwise improves administrative procedures and policies that may impede the timely and efficient delivery of benefits and services; and (c) provides evidence that the collaborative mechanisms will be continued beyond the life of the SAFAH grant. A greater number of points will be awarded to applications that demonstrate a direct linkage with existing collaborative efforts aimed at maximizing supportive service resources available to similar populations, including HHS–funded programs such as Homeless Family Support Centers, HUD–funded programs such as Family Self-Sufficiency and the joint HUD-Robert Wood Johnson Homeless Families Program, or similar state- or locally-funded integration initiatives.

2. Innovation (100 points)

HUD will award up to 100 points based on the innovative quality of the proposal for helping families achieve and sustain independent living and the highest level of self-sufficiency possible, when compared to other applications. Innovation quality will be assessed in terms of (a) responding to the needs of the families to be served; (b) a clear link between the innovation and its proposed effect; and (c) its ability to be used as a model in other communities. HUD will also assess the appropriateness and adequacy of the applicant's monitoring plan in relation to

the innovative approach of the proposal, including the extent to which measurable expected results for participating families are identified and a plan is proposed to monitor these results.

3. Leveraging (100 points)

HUD will award up to 100 points based on the extent to which the applicant will leverage the amount of SAFAH assistance requested with volunteer resources and cash from other public and private sources that are directly tied to helping families locate, secure, or remain in permanent housing. The resources must be (1) related to the housing related activities, case management, or tracking and follow-up activities specified in this notice, or (2) permanent, affordable housing resources that are directly targeted to project families. The resources may only be counted to the extent that they are not reimbursed with SAFAH assistance. Supportive service resources will be a critical rating factor but may not count toward leveraging. Leveraged resources may include, but are not limited to, State and local housing resources specifically targeted to SAFAH participants, the salaries to staff who provides housing counseling services to participant families, or the salaries of staff carrying out tracking and follow-up activities.

4. Cost Effectiveness (100 points)

HUD will award up to 100 points on an evaluation of the requested SAFAH funds in relation to the total package of benefits and services to be provided. HUD will consider the extent to which the applicant is able to pool or consolidate services from other programs into this effort.

II. Application Process

Application packages will be available beginning August 21, 1992 from the HUD field offices listed at the end of this notice. Additional information regarding the submission of applications is included in the package.

Only timely applications will be considered for funding. To be considered timely, the original and one copy must be received at the Office of Special Needs Assistance Programs at the address listed at the beginning of this Notice by no later than 5:15 p.m. on December 15, 1992. Applications received after this date and time will not be accepted even if postmarked by the deadline date. Applications sent by facsimile (FAX) will not be accepted.

III. Application Submission Requirements

Complete applications submission requirements, including a checklist of all necessary information and certifications to be provided, are contained in the application package. Potential applicants who have questions about the preparation or submission of applications may contact the Office of Special Needs Assistance Programs at (202) 708–4300.

IV. Corrections to Deficient Applications

A. Notification

HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

B. Curable Technical Deficiencies

Curable technical deficiencies are items that are not necessary for HUD review under ranking factors (*e.g.*, failure to submit a required certification with the application). Items that would improve the substantive quality of the application may not be submitted after the application due date has expired.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

B. Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice do not have federalism implications within the meaning of the Order. The Notice implements a program to provide assistance to States to be used for homeless families with children, thereby strengthening States in helping their homeless population find permanent homes and reenter the mainstream of American life. The Notice does not affect the relationship between the Federal government and States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under the Executive Order.

C. Family Executive Order

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the policies in this Notice may have a potentially significant impact on the maintenance and general well-being of participating homeless families. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since this impact is a beneficial one, the policies are not subject to review under the Executive Order.

D. Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures

1. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this Notice are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection of a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance under this Notice in its quarterly **Federal Register** Notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the Notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this Notice. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a

period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 12. (See 24 CFR part 12, subpart C, and the Notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.

E. *Section 103 HUD Reform Act*

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 TDD/Voice. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. *Section 112 HUD Reform Act*

Section 112 of the Housing and Urban Development Reform Act of 1989 (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). Appendix A of the rule contains examples of activities covered by the rule. Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–3815 TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. *Prohibition Against Lobbying Activities*

The use of funds awarded under this Notice is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have or will be spent on lobbying activities in connection with the assistance.

Dated: August 6, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

Appendix—Listing of HUD Field Offices

Alabama: Jasper Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 3000, Birmingham, AL 35209–3144; (205) 731–1672.

Alaska: Colleen Craig, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513–7537; (907) 271–3669.

Arizona: Diane Domzalski, 400 North First St., Suite 1600, Phoenix, AZ 85004–2361; (602) 379–4754.

Arkansas: Billy M. Parsley, Lafayette Bldg., 523 Louisiana, Ste. 200, Little Rock, AR 72201–3707; (501) 324–6375.

California:

(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235.

(Northern) Gordon H. McKay, 450 Goldengate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576.

Colorado: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Connecticut: Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508.

Delaware: John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665.

District of Columbia: James H. McDaniel, 820 1st St. NE, Washington, DC 20002; (202) 275–0094.

Florida: James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 791–3587.

Georgia: Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St. SW, Atlanta, GA 30303–3388; (404) 331–5139.

Hawaii: Patty A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96815–4918; (808) 541–1327.

Idaho: John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–7018.

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Iowa: Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Rd., Omaha, NE 68154–3955; (402) 492–3144.

Kansas: Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184.

Kentucky: Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394.

Louisiana: Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212.

Maine: David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.

Maryland: Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202–1865; (410) 962–2417.

Massachusetts: Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343.

Michigan: Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343.

Minnesota: Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019.

Mississippi: Jeanie E. Smith, Dr. A.H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765.

Missouri: (Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524.

(Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184.

Montana: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Nebraska: Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Rd., Omaha, NE 68154–3955; (402) 492–3144.

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New Mexico: R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483.

New York: (Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768.

(Downstate) Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885.

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Pennsylvania: (Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493.

(Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665.

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South Carolina: Louis E. Bradley, Acting, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564.

South Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

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Vermont: David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.

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Washington: John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2054; (206) 442–0374.

West Virginia: Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493.

Wisconsin: Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, WI 53203–2289; (414) 297–3113.

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Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 100

National Vaccine Injury Compensation Program; Revision of the Vaccine Injury Table; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN: 0905-AD64

National Vaccine Injury Compensation Program; Revision of the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking; findings.

SUMMARY: The Secretary has made findings as to the illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table (Table) by regulation pursuant to section 312 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Public Health Service Act (the Act). These proposed regulations would have effect only for petitions for compensation under the National Vaccine Injury Compensation (NVIC) Program filed after the new regulations become effective.

DATES: Comments must be submitted on or before February 11, 1993. A public hearing on this proposed rule will be held before the end of the public comment period. A separate notice will be published in the **Federal Register** to provide the details of this hearing.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A-55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Chief Medical Officer and Deputy Director, Division of Vaccine Injury Compensation, BHPr, (301) 443-6593. David Benor, Senior Attorney, Office of the General Counsel, (301) 443-2006.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986, title III of Pub. L. 99-660 (42 U.S.C. 300aa-10 et seq.) established a Federal compensation program for persons thought to be injured by vaccines. Petitions for compensation under this Program are filed with the United States Claims Court, with a copy served on the Secretary, who is denominated the "Respondent." The Claims Court, acting through special masters, makes findings as to eligibility for, and amount of, compensation.

In order to gain an award under this program, the petitioner must establish a vaccine-related injury or death, either by showing an event which is presumed to be caused by a vaccine or by proving causation in fact. In some cases, the petitioner may simply demonstrate the occurrence of what has been referred to as a "Table injury." That is, it may be shown that the vaccine recipient suffered an injury of the type enumerated in section 2114(a) of the Act (42 U.S.C. 300aa-14(a))—the "Vaccine Injury Table"—corresponding to the vaccination in question, and that the *onset* of such injury took place within a time period from the vaccination also specified in the Table. If so, the Table injury is in effect presumed to have been caused by the vaccination, and the petitioner is automatically entitled to compensation, *unless* it is affirmatively shown that the injury was caused by some factor other than the vaccination (see secs. 2111(c)(1)(C)(i), 2114(a), and 2113(a)(1)(B)). Congress recognized that the Table initially set forth in the statute inevitably would compensate some individuals whose injuries were not actually caused by the vaccine. Congress was willing to accept some such inaccuracy for simplicity's sake, and in order to ensure compensation of most persons actually injured by the enumerated vaccines.

The legislative history states: The Committee recognizes that there is public debate over the incidence of illnesses that coincidentally occur within a short time of vaccination. The Committee further recognizes that the deeming of vaccine-relatedness adopted here may provide compensation to some children whose illness is not, in fact, vaccine-related. The Committee anticipates that the research on vaccine injury and vaccine safety now ongoing and mandated by this legislation will soon provide more definitive information about the incidence of vaccine injury and that, when such information is available, the Secretary or the Advisory Commission on Childhood Vaccines * * * may propose to revise the Table, as provided below in section 2114 (Initial Table). Until such time, however, the Committee has chosen to provide compensation to all persons whose injuries meet the requirements of the petition and the Table and whose injuries cannot be demonstrated to be caused by other factors. [H.R. Rept. 99-908, Part 1, September 26, 1986, page 18 (or as found in 1986 U.S. Code Cong. and Admin. News, Vol. 6, page 6359)].

Since the enactment of the statute, there have been serious concerns about the degree to which the assumptions underlying the Vaccine Injury Table were founded in science, and concerns that substantial numbers of petitions were being compensated inappropriately because they are being compensated for non-vaccine related injuries. Indeed, when it first enacted the statute creating this Program, Congress mandated a review to be undertaken by the IOM with the express purpose of providing a better scientific rationale for any presumptions of vaccine causation. Under section 312 of Pub. L. 99-660, Congress mandated that the IOM review the scientific literature and other information on specific adverse consequences of pertussis and rubella vaccines.

The Secretary has completed a review of the relevant medical and scientific information pertaining to pertussis vaccines and related illnesses and conditions, as well as a review of vaccines containing rubella (including measles, mumps and rubella vaccine) and related illnesses and conditions (section 312(b)). At the request of the Secretary, the Institute of Medicine (IOM) of the National Academy of Sciences conducted this review, and published its report, entitled *Adverse Effects of Pertussis and Rubella Vaccines*, on August 27, 1991.

The IOM acted through a Committee which was made up of 11 experts in infectious disease, pediatrics, internal medicine, neurology, epidemiology, biostatistics, decision analysis, immunology and public health, who devoted 20 months to the review of the data. The committee held five public meetings in which commentary and other information pertinent to the committee's task was sought from persons outside the committee. Committee members took the opportunity to consider new or controversial data and various points of view and to identify gaps in knowledge. The Report is an inventory and review of existing information about adverse reactions following immunization with pertussis and rubella vaccines, including scientific articles, government reports, lay publications, testimony given in public meetings and communications with informed individuals. The

bibliography contains approximately 1,400 citations. No original research was conducted by the Committee.

The IOM Committee undertook the task of judging whether, based on available evidence, a causal relationship exists between each adverse event examined and exposure to pertussis or rubella vaccine. A classification system was used to categorize their conclusions about the strength of a causal association.

The Public Health Service (PHS) Task Force on the National Vaccine Injury Compensation Program made the initial recommendations regarding review of the IOM Report and possible revision of the Vaccine Injury Table. On November 8, 1991, a subcommittee of the National Vaccine Advisory Committee (NVAC) (section 2105 of the Act) made an initial review of the PHS Task Force recommendations. This subcommittee was composed of members of the NVAC and received testimony from outside experts from the fields of epidemiology, pediatric infectious disease, and pediatric neurology. The recommendations of the Subcommittee were forwarded to the full NVAC for its review at its meeting of November 25 and 26, 1991.

The Advisory Committee on Childhood Vaccines (ACCV), whose membership, by statutory directive, reflects a variety of views relating to childhood immunizations (section 2119 of the Act), considered the NVAC report as well as the PHS Task Force recommendations at its meeting of December 11 and 12, 1991. The ACCV deliberations included public policy considerations, whereas the NVAC charge was to consider only the scientific issues raised by the existing table, the recent IOM report, and other scientific information.

The Secretary has examined the recommendations of the NVAC and its subcommittee, and of the ACCV, and proposes that the initial Table set forth in section 2114 of the Act be revised as set forth below. As provided in section 2114(c)(4), the New Table will apply only to petitions filed under the Program after the effective date of the final regulation.

Pursuant to section 313 of Pub. L. 99–660, the Secretary has arranged with the IOM for an additional broad study of the risks associated with each vaccine set forth in the Vaccine Injury Table, other than the risks previously identified in the section 312 mandated IOM study discussed above. Vaccine and conditions not previously studied under section 312 will be made a part of this study. Furthermore, the IOM has included Hepatitis B vaccine and Haemophilus influenzae type b vaccine in this study. Following a review of this section 313 mandated IOM study, the Secretary may propose additional amendments to the Vaccine Injury Table, as well as to the Qualifications and Aids to Interpretation.

The Department publishes a Notice of Proposed Rulemaking in the **Federal Register** before a regulation is promulgated. The public is invited to submit comments on this proposed rule. In addition, a public hearing will be held for this proposed rule. After the public comment period has expired, the Department will publish the final rule in the **Federal Register.** The comments received on the proposed rule and the Department's responses to the comments will be addressed in the preamble to the final regulation.

Findings

Pursuant to section 312(b) of Pub. L. 99–660 (42 U.S.C. 300aa–1 note), and based on the IOM Report, the Secretary has made and now publishes the following specific findings:

1. The scientific evidence indicates that there is no causal relation between vaccines containing pertussis and: Infantile spasms, hypsarrhythmia, Reye syndrome, Sudden Infant Death Syndrome or afebrile seizures.

2. There is no evidence bearing on a causal relation between vaccines containing pertussis and autism.

3. The evidence is insufficient to indicate a causal relation between vaccines containing pertussis and: Epilepsy, aseptic meningitis, chronic neurologic damage, erthema multiforme or other rash, Guilliam-Barre syndrome, hemolytic anemia, juvenile diabetes, learning disabilities and attention-deficit disorder, peripheral mononeuropathy, thrombocytopenia, or permanent neurologic damage or death following hypotonic-hyporesponsive episodes.

4. The evidence is consistent with a causal relation between vaccines containing pertussis and: Acute encephalopathy and shock and "unusual shock-like state."

5. The evidence indicates a causal relation between vaccines containing pertussis and: Anaphylaxis, protracted, inconsolable crying, and febrile seizures.

6. The evidence is insufficient to indicate a causal relation between rubella vaccine and: Radiculoneuritis and other neuropathies, or thrombocytopenic purpura.

7. The evidence is consistent with a causal relation between rubella vaccine and chronic arthritis.

8. The evidence indicates a causal relation between rubella vaccine and acute arthritis.

Discussion of Proposed Table Changes

The following proposed revision of the Table and the related Qualifications and Aids to Interpretation takes into account the recommendations of the ACCV and NVAC. These two outside reviewing bodies have based their recommendations primarily on the IOM Report as well as other relevant scientific information. Set forth below is a discussion of each proposed change to the Initial Table, including an explanation of the rationale for the change.

The Department notes that the removal of a condition from the Table, or the inclusion of a revised definition thereof, will not necessarily result in compensation being denied where it would previously have been awarded. Rather, the result will be that a presumption of vaccine causation will no longer apply. Petitioners may still prevail by providing proof of causation in fact.

I. DTP; P; DTP/Polio Combination; or Any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Bacteria, or Specific Pertussis Antigen(s) DT; Td; or Tetanus Toxoid

Note: DT, Td or Tetanus toxoid were not separately covered in the IOM report. However, since diphtheria vaccine and tetanus toxoid are given a part of the DTP vaccine, and because most of the epidemiologic evidence regarding pertussis is based on study of the pertussis antigen as part of the DTP vaccine, it follows that changes made for Encephalopathy and Residual Seizure Disorder for DTP should also be made for these-nonpertussis components. Pending the IOM Review of DT, TD and tetanus toxoid, the Department proposes to continue to include anaphylaxis or anaphylactic shock and encephalopathy as compensable "Table" injuries; however, the Department is aware of little credible evidence for a causal relation between these antigens and encephalopathy, and thus advises that it is likely that encephalopathy will be removed from the Table following the additional IOM review under section 313.

A. Anaphylaxis or Anaphylactic Shock: Arrow Timeframe from 24 Hours to 4 Hours

The Department proposes to narrow the timeframe for anaphylaxis or anaphylactic shock following DTP, DTP/Polio, P, DT, Td, or tetanus toxoid vaccination from 24 hours to 4 hours. Anaphylaxis and anaphylactic shock

refer to a sudden, potentially life-threatening, systemic condition mediated by highly reactive molecules released from mast cells and basophils. Clinical signs may occur within minutes to a few hours depending on the rate at which the antigen enters the circulation and the degree of sensitization (IgE antibody formation) (*IOM report, page 144*). For purposes of this rule, "life threatening" means that medical intervention was required to prevent death. That medical intervention may include oxygen, epinephrine, fluids or antihistamines. A standard textbook of Pediatrics specifies the onset of anaphylaxis as beginning within seconds to minutes after exposure and "rarely as late as 1 hour." (*Buckley RH: Allergy. In Rudolph AM. (ed): Rudolph's Pediatrics. ed 19. Norwalk, Appleton and Lange, 1991, p. 518*) The proposed 4 hour limit thus provides a wide margin for a presumption of vaccine causation.

B. Encephalopathy: Amend Definition in Qualifications and Aids to Interpretation

The issue of encephalopathy for vaccines containing pertussis antigen is a difficult one. The IOM found evidence "consistent with a causal relation" for *acute* encephalopathy, but found "insufficient evidence" to demonstrate a relation between such vaccines and *chronic* neurologic damage. Because the statute requires that a petitioner must show 6 months of residual effects of a Table injury, a finding of a relation between pertussis-containing vaccines and acute, but not chronic, encephalopathy does not justify continuing the presumption of causation for long-term neurologic damage.

Although the IOM report found evidence consistent with a causal relation between the DTP vaccination and acute encephalopathy, the NVAC review noted that the evidence was not overwhelming for a causal relation. Only the National Childhood Encephalopathy Study (NCES) found a statistically significant relationship. Three other controlled epidemiological studies did not demonstrate a statistically significant risk. Furthermore, analysis of the NCES by other epidemiologists suggested errors and potential bias in the study. The NVAC voted to remove encephalopathy from the Table, thus requiring petitioners to prove causation in fact for cases alleging this condition.

The ACCV, on the other hand, felt that reliance on the finding of a causal relation by the IOM justified retaining encephalopathy as a condition for which causation could be presumed. Recognizing weaknesses in the initial statutory definition of "encephalopathy" in the Qualifications and Aids to Interpretation, the ACCV voted to retain the condition on the Table, but only with a new definition that more properly reflected the scientific understanding of the condition and the knowledge of alternative causes of the condition. The new definition is discussed in detail below.

The Department appreciates the analysis of the NVAC on this matter. The Department notes that the evidence is indeed scanty to justify a presumption that long-term neurologic damage may result from vaccines containing pertussis antigen. Nevertheless, given the statutory requirement for a demonstration of 6 months of continued effects of a Table injury, here—an encephalopathy—the Department is persuaded that the ACCV approach is reasonable. The petitioner must demonstrate not only that an encephalopathy, as defined in the Qualifications and Aids to Interpretation, occurred, but also that the encephalopathy led to at least 6 months of residual effects. Therefore, the absence of evidence linking the vaccine to chronic neurologic damage does not require that the condition be removed from the Table. In effect, while the petitioner may be entitled to a presumption that the vaccine caused the acute condition, he or she would still have to prove that the chronic condition was a sequela (see proposed definition of this term) or a residual effect of the acute event, lasting at least 6 months. On this basis, the Department proposes to retain encephalopathy as a Table injury, subject to the changes noted.

C. Shock-collapse or HHE: Remove from Table

Shock collapse or hypotonic hyporesponsive collapse was found by the IOM report to be consistent with a causal relation to DTP. This clinical syndrome includes a variety of signs and is poorly understood in terms of pathophysiology. Although the IOM did find evidence for causation between the DTP vaccine and HHE (category #4), it concluded the evidence proving any neurologic sequelae was "insufficient." The three controlled studies which have examined this issue have found no such relation (*IOM report, pages 176 and 177*).

Because there is no proven relationship between HHE and residual neurologic damage, any injuries following an HHE event should be proven to be a direct result of the vaccine. Both the NVAC and the ACCV recommended deleting this condition from the Table. By removing this as a Table injury, the petitioner is given the burden of proving that an HHE that occurred was caused by a vaccine and that is directly resulted in death or residual effects lasting at least 6 months.

D. Residual Seizure Disorder: Remove from Table

Residual Seizure Disorder was also examined by the IOM. No causal relationship was found between DTP and afebrile seizures based on three controlled studies and "insufficient evidence" for DTP and epilepsy (recurrent afebrile seizures) based on only one controlled study. There is good evidence from controlled studies that febrile seizures are causally related to the DTP vaccine. However, even when a febrile seizure follows a STP shot, there is no evidence that any resulting neurologic deficits are causally related to the vaccine (*IOM report, pages 106, 107, 117 and 118*). Because febrile seizures and afebrile seizures following DTP vaccination have not been proven to cause permanent neurologic damage, a presumption of causation should not be made. By removing this as a Table Injury, the petitioner is given the burden of proof that a residual seizure disorder occurred as a result of the vaccine and that it directly resulted in death or residual effects for at least 6 months.

E. Any acute complication of sequela (including death) * * * No change.*

II. Measles, Mumps, and Rubella Vaccines (Alone or in Combination)

A. Anaphylaxis or Anaphylactic Shock: Narrow Timeframe from 24 hours to 4 hours.

Note: Delete "DT; Td; or Tetanus Toxoid" from this category, as they more properly belong with pertussis in category I. above.

The Department proposes to narrow the timeframe for anaphylaxis or anaphylactic shock from 24 hours to 4 hours following measles, mumps, and rubella vaccinations (alone or in combination), for the reasons stated above, under category I.A.

B. Encephalopathy: Narrow Timeframe of Onset from 0–15 Days to Onset from 5 to 15 Days

Note: The Department has deleted references to "DT, Td or tetanus toxoid" and placed these vaccines in category I. above. Side effects following the administration of measles, mumps, and rubella vaccines, alone or in combination, begin 5 to 15 days following vaccination and are generally mild and limited to susceptible vaccines. Based on epidemiologic data, any adverse neurological event before or

after this timeframe should not be presumed the result of the measles, mumps, and rubella vaccination (alone or in combination). (*Landrigan PJ, Witte JJ: Neurologic disorders following live measles-virus vaccination. JAMA 1973; 223:1459–1462) (Miller CL: Surveillance after measles vaccination in children. Practitioner 1982; 226:535–537*)

C. *Residual Seizure Disorder: Narrow Timeframe of Onset from 0–15 Days to Onset from 5 to 15 Days.*

Note: Delete references to "DT, Td or tetanus toxoid." Side effects following the administration of measles, mumps, and rubella vaccines, alone or in combination, begin 5 to 15 days following vaccination and are generally mild and limited to susceptible vaccines. Based on epidemiologic data, any adverse neurological event before or after this timeframe should not be presumed the result of the measles, mumps, and rubella vaccination (alone or in combination). (*Landrigan PJ, Witte JJ:Neurologic disorders following live measles-virus vaccination. JAMA 1973; 223:1459–1462) (Miller CL. Surveillance after measles vaccination in children. Practitioner 1982; 226:535–537*)

D. *Any acute complication or sequela (including death* * * * No change.

E. *Chronic arthritis: Add to the Table: Onset within 42 days.*

The IOM report found evidence to be consistent with a causal relation between rubella vaccine and chronic arthritis. It also concluded that the evidence indicates a causal relation between rubella vaccine and acute arthritis. Because the statue specifies that any residual effects must be present for at least 6 months following the vaccine, acute arthritis would not be eligible for compensation. However, the Department must resolve the issue of creating a presumption of causation for cases of chronic arthritis. In doing so, the Department has considered the views of the NVAC and the ACCV.

The NVAC and the ACCV made different recommendations regarding the addition of chronic arthritis to the Table of Injuries. The NVAC first looked at the proposed criteria for defining cases of arthritis which could be linked to the rubella vaccine that had been proposed by the PHS Task Force on the basis of the IOM's recommendation for further testing (*IOM report, pages 195–197*). These criteria included isolation of the rubella virus from the synovial fluid or leukocytes of the individual and identification of the virus as the vaccine strain. The NVAC concluded that most clinical laboratories do not now have the ability to conduct such tests, and therefore, that it would not be feasible to require a petitioner to provide laboratory results showing that a case of chronic arthritis was in fact vaccine-related. Accordingly, the NVAC voted to recommend that the condition not be included at all in the revised Table.

The ACCV, on the other hand, recommended that even without these criteria, the remaining requirements for finding a case compensable (onset of acute arthritis within 42 days of rubella vaccination, no prior history of arthropathy (joint disease), objective signs of chronic arthritis lasting at least 6 months; see Qualifications and Aids to Interpretation) would be sufficiently restrictive to limit compensable cases to those with a high probability of vaccine causation. On this basis, the Department proposes to include chronic arthritis on the Table, with criteria similar to those proposed by the ACCV.

The time guidelines specified in the Table are from published reports of onset of signs of acute arthritis following ruebella vaccination. (*Polk BF, et al: A controlled comparison of joint reactions among women receiving one of two rubella vaccines. American Journal of Epidemiology 1982; 115:19–25) (Weibel RE, et al: Clinical and laboratory studies of live attenuated RA 27/3 and HPV 77–DE rubella virus vaccines. Proceedings of the Society of Experimental Biology and Medicine 1980;165:44–49)*

III. Polio Vaccines (Other Than Inactivated Polio Vaccine)

The Department does not recommend any changes.

IV. Inactivated Polio Vaccine

A. *Anaphylaxis or anaphylactic shock: narrow timeframe from 24 hours to 4 hours.*

The Department proposes to narrow the timeframe for anaphylaxis or anaphylactic shock from 24 hours to 4 hours for inactivated polio vaccination, for the reasons stated above under category I.A.

B. *Any acute complication or sequela (including death)*: No change.

V. Qualifications and Aids to Interpretation

A. *Add "anaphylaxis and anaphylactic shock"—add new definition (see paragraph (b)(1)).*

While the initial statutory qualifications and aids to interpretation provided guidance for the other Table conditions, anaphylaxis and anaphylactic shock were omitted. Language describing the clinical signs or symptoms associated with anaphylaxis and anaphylactic shock are therefore proposed to be added to the Aids to Interpretation. Because the Program reviews cases of death, it is important for the Court to have some written guidelines which reflect the current scientific understanding of this life-threatening condition. (*Geha RS., Umetsu DT., et al: Immunology. In: Avery ME, first LR. (eds). Pediatric Medicine. Baltimore, Williams and Wilkins, 1989, p. 100–1010) (Heimlick EM., Sheldon SC., Anaphylaxis. In: Kelly VC. (ed). Practice of Pediatrics. Philadelphia, Harper and Row, 1986; 2(79): p.1–5) (IOM Report, p. 144–150)*

B. *Delete "shock–collapse or hypotonic–hyporesponsive collapse" consistent with Table revision.*

C. *Redefine "residual seizure disorder"—see paragraph (b)(3) and the related paragraph (b)(4).*

Because the Table is proposed to be amended to include this condition only for measles, mumps, and rubella vaccines (alone or in combination), the new definition would apply only to these vaccines. In addition, the Department proposes other changes to have the definition reflect medical understanding of this condition more precisely. Among the significant changes are the following:

(1) Remove "petit mal and absence seizures

Petit mal epilepsy is a genetic disorder which rarely presents before 4–5 years of age. Absence seizures are also rare under a year of age and, like petit mal epilepsy, are not associated with acute encephalopathy. (*Dreifuss F: Generalized Seizures: Absence. In Dreifuss, F (ed): Pediatric Epileptology. Boston, J. Wright/PSG, 1983, p. 65–91.)*

(2) Add "jerking movements or staring episodes alone are not necessarily an indication of seizure activity"

Examples of paroxysmal disorders which are not epileptic in nature include breathholding spells, spasmus nutans, nystagmus and sleep myoclonus. Staring episodes are an indication of petit mal or absence epilepsy which are not a sequelae of acute encephalopathy as noted above. (*McMillian JA., Nieburg PI., Oski FA., (eds): Whole Pediatric Catalogue. Philadelphia, W.B. Saunders Co. 1977, (1):331–335) (Lockman LA: Nonepileptic Paroxysmal Disorders. In Swaiman, KF (ed): Pediatric Neurology-Principles and Practice. St. Louis, C.V. Mosby Co., 1989, (1): p.444)*

(3) Add "infantile spasms (with or without hypsarrhythmia), if properly diagnosed, shall not be considered to be a condition set forth in the Table"

The IOM concluded that both infantile spasms and hypsarrhythmia are not

causally related to the DTP vaccine. Infants with idiopathic infantile spasms who experience their first myoclonic seizure following a DTP vaccination are presently compensated under the Program (*IOM report, pages 76 and 77*). Despite the evidence in the medical literature that there is no causal association between DTP and infantile spasms, the Court has consistently ruled in favor of the petitioner if the first myoclonic seizure occurs within 72 hours of DTP vaccine administration. The proposed change would require that this non-vaccine related neurologic disorder not be viewed as a condition set forth in the Table. The Department is including a definition of "infantile spasms" in the Qualification and Aids to Interpretation (see proposed paragraph (b)(8)).

(4) Add definition of temperature threshold for fever so as to distinguish between febrile seizure versus afebrile seizures

There is no definitive literature on the threshold temperature for febrile seizures in children. No temperature standard exists. The proposed temperature guidelines (101.0 °F. rectally or 100.0 °F. orally) reflect a more commonly accepted temperature standard for determining the presence of fever. The 102 degree guideline used in the Initial Table has no basis in the medical literature. *(Moffet HL: Pediatric Infectious Diseases—A Problem Oriented Approach, ed 3. Philadelphia, Lippincott, 1989, p. 277)*

(5) Add requirement for the 2 post-immunization afebrile seizures to be at least 24 hours apart

Seizures commonly occur in clusters. By requiring a 24 hour separation in time, the Department is making the recurrence of a seizure more likely to be indicative of a recurring epileptic disorder. Seizures that occur on the same day are generally regarded as a single event. (*Hauser WA et al: Seizure recurrence after a first unprovoked seizure. NEJM 1982; 307(9):522–528*) This time requirement is intended to identify those children who have a true seizure disorder versus those who have an isolated cluster of seizures.

D. *Add standards defining chronic arthritis.*

Because the Department is proposing to add chronic arthritis to the Table, guidance is necessary to help define when the condition will be presumed to be vaccine-related. The primary elements of this guidance are as follows:

Vaccine-related chronic arthritis shall be found in a person with no previous history of arthropathy (joint disease) on the basis of:

(1) Medical documentation, at the time of the administration, of a rubella vaccine;

(2) Medical documentation, within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred within 42 days after a rubella vaccination; and

(3) Medical documentation of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following, and within 3 years of, the onset of acute arthritis.

E. *Add definition of "sequela"—see paragraph (b)(5).*

The Initial Tale included a "sequela" of a condition listed on the Table as an event for which causation would be presumed. No definition of the word was included, however. The Department proposes to define "sequela" to require a showing that a subsequent event or condition was caused in fact by a Table injury.

F. *Revise definition of "encephalopathy".*

The initial guidance in the Qualifications and Aids to Interpretation did not reflect precisely medical knowledge of the condition encephalopathy. The proposed rule sets forth more precise information about the condition and includes more explicit statements reflecting knowledge of what non-vaccine causes lead to the condition and should therefore not be presumed to be vaccine-related. Among the significant changes are the following:

(1) Because the residual seizure disorder is proposed to be eliminated for vaccines containing pertussis antigens, the relationship of seizures to encephalopathy is articulated more fully than previously. While a seizure may in fact constitute a sign of an encephalopathy, seizures alone will not be presumed to be vaccine-related.

(2) For children under 24 months of age, signs of encephalopathy are often difficult to diagnose. The proposed rule would set forth different standards for this condition in children younger than 24 months.

(3) Guidance is included to distinguish between acute and chronic encephalopathies. Children who return to a normal neurological state after an acute encephalopathy, but later develop signs of a chronic encephalopathy will not be presumed to have a vaccine-related condition.

(4) The IOM found that both Sudden Infant Death Syndrome and infantile spasms are not causally related to pertussis vaccines. Because the application of the initial statutory Table of Injuries has led to many cases of these conditions being compensated as vaccine-related injuries or deaths, the proposed rule would explicitly provide that these conditions are not to be found to be Table injuries for encephalopathy. To reflect the possibility of an improper diagnosis, however, the Qualifications would limit this provision to cases which are "properly diagnosed." Definitions of both "Sudden Infant Death Syndrome" and "infantile spasms" are included as proposed paragraphs (b)(7) and (b)(8) respectively in the Qualification and Aids to Interpretation.

(5) Add "without regard to whether the cause of the infection, toxin, trauma, metabolic disturbance, structural lesion, or genetic disorder is known"

This language would provide that the specific cause, for example of an infection, need not be shown; it is enough to show that the vaccine is not implicated.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

The Department has also determined that this proposed rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In addition, costs will not exceed the threshold criteria of $100 million for major rules; therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This regulation has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Compensation, Health insurance, Immunizations.

Dated: April 10, 1992.

James O. Mason,

Assistant Secretary for Health.

Approved: June 12, 1992.

Louis W. Sullivan,

Secretary.

For the reasons stated above, it is proposed to amend 42 CFR part 100 as set forth below.

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for Part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the

PHS Act, 100 Stat. 3767, as amended [42 U.S.C. 300aa–15]; with respect to the Vaccine Injury Table: sec. 312 of Pub. L. 99–660 [42 U.S.C. § 300aa–1 note) and sec. 2114(c) of the PHS Act [42 U.S.C.)300aa–14(c)].

2. Section 100.3 is added to read as follows:

§ 100.3 Vaccine Injury Table.

(a) In accordance with section 312(b) of the National Childhood Vaccine Injury Act of 1986, title III of Pub. L. 99–660 (42 U.S.C. 300aa–1 note) and section 2114(c) of the Public Health service Act (42 U.S.C. 300aa–14(c)), the following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:

VACCINE INJURY TABLE

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. DTP; P; DT; Td; or Tetanus Toxoid; or in any combination with Polio; or any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Pertussis Bacteria, or Specific Pertussis Antigen(s)	
A. Anaphylaxis or anapyhlactic	4 hours.
B. Encephalopathy (or encephalitis)	72 hours.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(a). Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component;	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
C. Residual seizure disorder in accordance with subsection (b)(3)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
D. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(b). In the case of measles, mumps, rubella (MMR), measles, rubella (MR) or rubella vaccines only	
A. Chronic arthritis	42 days.
B. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury or condition arose within the time period prescribed.	Not applicable.
III. Polio Vaccines (other than Inactivated Polio Vaccine)	
A. Paralytic Polio	
——in a non-immunodeficient recipient	30 days.
——in an immunodeficient recipient	6 months.
——in a vaccine associated communty case	Not applicable.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Inactivated Polio Vaccine	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Any acute complication or sequila (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.

(b) *Qualifications and Aids to Interpretation.* The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in paragraph (a) of this section:

(1) *Anaphylaxis and anaphylactic shock* refer to an acute, severe, and potentially lethal systemic allergic reaction. Most cases resolve without sequelae. Signs and symptoms begin minutes to a few hours after exposure. Death, it if occurs, usually results from airway obstruction caused by laryngeal edema or bronchospasm and may be associated with cardiovascular collapse. Other significant clinical signs and symptoms may include the following: Cyanosis, hypotension, bradycardia, tachycardia, arrhythmia, edema of the pharynx and/or trachea and/or larynx with stridor and dyspnea. Autopsy finding may include acute emphysema which results from lower respiratory tract obstruction, edema of the hypopharynx, epiglottis, larynx, or trachea and minimal findings of eosinophilia in the liver, spleen and lungs. When death occurs within minutes of exposure and without signs of respiratory distress, there may not be significant pathologic findings. Sudden Infant Death Syndrome (SIDS), if properly diagnosed, shall not be considered to be a condition set forth in the Table in paragraph [a] of this section.

(2) The term "*encephalopathy*" means any acute or chronic significant acquired abnormality of, or injury to, or impairment of function of, the brain.

(i) *Acute Encephalopathy shall be defined as follows:* An acute encephalopathy should be sufficiently severe to require health care intervention and hospitalization.

(A) *For children less than 24 months of age* who present without an associated seizure event, an acute encephalopathy shall be defined as a significantly decreased level of consciousness, specifically stupor or coma, lasting for at least 24 hours. Those children less than 24 months of age who present following a seizure shall be viewed as having an acute encephalopathy if their stupor or coma persists beyond 24 hours and cannot be attributed to a postictal state or medication.

(B) *For children 24 months or age or older* an acute encephalopathy is one that persists for at least 24 hours and characterized by at least two of the following:

(1) A significant change in mental status that is not medication related; specifically a confusional state, or a delirium, or a psychosis;

(2) A significantly decreased level of consciousness, which is independent of a seizure and cannot be attributed to the effects of medication; or

(3) A seizure associated with loss of consciousness.

(C) Increased intracranial pressure may be a clinical feature of acute encephalopathy in any age group.

(D) The following clinical features alone, or in combination, do not qualify as evidence of an acute encephalopathy or a significant change in either mental status or level of consciousness as described above: Sleepiness, irritability (fussiness), high-pitched and unusual screaming, persistent inconsolable crying, and bulging fontanelle. Seizures in themselves are not sufficient to constitute a diagnosis of encephalopathy. In the absence of other evidence of an acute encephalopathy, seizures shall not be viewed as the first symptom or manifestation of the onset of an encephalopathy.

(ii) *Chronic encephalopathy* is defined as persistence of the acute findings for an extended period, usually several months to years beyond the acute episode. Individuals who return to a normal neurological state after the acute encephalopathy shall not be presumed to have suffered residual neurologic damage from the vaccine; any subsequent chronic encephalopathy shall not be presumed to be a sequela of the acute encephalopathy. Children with evidence of a chronic encephalopathy secondary to genetic, prenatal or perinatal factors shall not be considered to have a condition set forth in the Table.

(iii) Sudden Infant Death Syndrome (SIDS) and infantile Spasms, if properly diagnosed, shall not be considered to be conditions set forth in the Table.

(iv) An encephalopathy shall not be considered to be a condition set forth in the Table if in a proceeding on a petition, it is shown by a preponderance of the evidence that an encephalopathy was caused by an infection, a toxin, a metabolic disturbance, a structural lesion, a genetic disorder or trauma. (without regard to whether the cause of the infection, toxin, trauma, metabolic disturbance, structural lesion or genetic disorder is known). If at the time a decision is made on a petition filed under section 2111(b) for a vaccine-related injury or death, it is not possible to determine the cause by a preponderance of the evidence of an encephalopathy, the encephalopathy shall be considered to be a condition set forth in the Table.

(v) An encephalopathy which has been shown by a preponderance of evidence to be caused by a pre-existing condition cannot be presumed to be significantly aggravated by the vaccine if the condition is following its natural clinical course.

(vi) In determining whether or not an encephalopathy is a condition set forth in the Table, the court shall consider the entire medical record.

(3) *Residual seizure disorder.* (i) A petitioner shall not be considered to have suffered a residual seizure disorder if the petitioner suffered a seizure or convulsion unaccompanied by fever (defined as a rectal temperature equal to or greater than 101.0 degrees Fahrenheit or an oral temperature equal to or greater than 100.0 degrees Fahrenheit) before the fifth day after the administration of the vaccine involved.

(ii) A petitioner may be considered to have suffered a residual seizure disorder if the first seizure or convulsion occurred 5–15 days (not less than 5 days and not more than 15 days) after administration of the vaccine and 2 or more additional distinct seizure or convulsion episodes (defined as occurring at least 24 hours apart) occurred within 1 year after the administrative of the vaccine which were unaccompanied by fever (defined as a rectal temperature equal to or greater than 101.0 degrees Fahrenheit or an oral temperature equal to or greater than 100.0 degrees Fahrenheit).

(4) For purposes of paragraphs (b)(2) and (3) of this section, the terms "*seizure*" and "*convulsion*" include grand mal, myoclonic, generalized tonic-clonic, and simple partial seizures and signs. Petit mal and absence seizures shall not be considered to be conditions set forth in the Table. Jerking movements or staring episodes alone are not necessarily an indication of seizure activity. Infantile spasms (with or without hypsarrhythmia), if properly diagnosed, shall not be considered to be a condition set forth in the Table.

(5) The term "*sequela*" means a condition or event which is caused by a condition listed in the Vaccine Injury Table. The petitioner must prove by a preponderance of the evidence that the condition listed in the Vaccine Injury Table is the cause-in-fact of the resulting sequela. The petitioner must prove a logical sequence of cause and effect supported by a generally accepted medical or scientific explanation.

(6) Chronic arthritis: (i) Vaccine-related chronic arthritis shall be found in a person with no prior history of arthropathy (joint disease) on the basis of:

(A) Medical documentation, at the time of the administration, of a rubella vaccine;

(B) Medical documentation, within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred within 42 days after a rubella vaccination; and

(C) Medical documentation of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following, and within 3 years of the onset of, acute arthritis.

(ii) The following shall not be considered conditions set forth in the Table in paragraph (a) of this section: Musculoskeletal disorder such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polyositis/dermatomyositis, necrotizing vasculitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction), metabolic and endocrine disease, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reiter's syndrome, or blood disorders.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as arthritis.

(7) A *proper diagnosis* of Sudden Infant Death Syndrome (SIDS) shall mean the sudden death of an infant under 1 year of age which remains unexplained after a complete (including macroscopic and microscopic anatomical examinations) postmortem examination and a review of the case history. Nothing will have been found to otherwise explain the death in any death scene investigation that may have been undertaken.

(8) Infantile spasms, whether or not the etiology is known, is a specific form of infantile myoclonic epilepsy whose onset is limited almost entirely to the first year of life. The condition is characterized by the following:

(i) Brief flexor extensor, or mixed flexor-extensor seizures that tend to occur in clusters. They rarely occur during sleep, but frequently occur upon, or soon after arousal.

(ii) Electroencephalographic (EEG) abnormalities of hypsarrhythemia or

modified hypsarrhythmia. The absence of hypsarrhythmia does not preclude the diagnosis of infantile spasms.

(iii) Psychomotor retardation in the majority (85–95%) of children. The absence of retardation does not preclude diagnosis of infantile spasms.

(c) *Effective date provisions:* The revised Table of Injuries set forth in paragraph (a) of this section applies to petitions for compensation under the Program filed with the United States Claims Court on or after the effective date of this section. The qualifications and Aids to Interpretation set forth in paragraph (b) of this section apply to petitions filed with the United States Claims Court on or after the effective date of this section. The petitions for compensation filed with the United States Claims Court before the effective date of this section shall be governed by section 2114(a) ("Initial Table") and section 2114(b) (initial "Qualifications and Aids to Interpretation") of the Public Health Service Act.

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Reader Aids

Federal Register

Vol. 57, No. 158

Friday, August 14, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

34061-34200.....3
34201-34494.....4
34495-34664.....5
34665-34850.....6
34851-35454.....7
35455-35744.....10
35745-35980.....11
35981-36350.....12
36351-36586.....13
36587-36886.....14

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6463.....36349
Executive Orders:
8597 (Revoked by PLO 6939 of July 22, 1992.....35467
12674 (See OGE final rule of May 7, 1992).....35006
12731 (See OGE final rule of May 7, 1992).....35006
12813.....34851
Administrative Orders:
Presidential Determinations:
No. 92-37 of August 3, 1992.....36587

4 CFR

Ch. III.....34167

5 CFR

532.....35745
2635.....35006
Proposed Rules:
297.....35491

7 CFR

28.....34495
246.....34500
400.....34665
718.....34201
719.....34201
720.....34201
907.....34203
908.....34203
932.....35745, 36351
944.....35747, 36354
989.....34206
998.....34061
1209.....34349, 35004
1413.....34201
1414.....34201
1806.....36589
1863.....36589
1925.....36589
1942.....35627
1944.....36589
1945.....36589
1951.....36589
1955.....36589
1962.....36589
1965.....36589
Proposed Rules:
58.....35492
300.....34349
318.....35627
319.....34349
906.....34268
948.....34269
1001.....36609
1002.....36609
1004.....36609
1005.....36609
1007.....36609
1011.....36609
1030.....36609
1033.....36536
1036.....36536
1040.....36609
1044.....36609
1046.....36609
1049.....36536
1065.....36609
1068.....36609
1079.....36609
1093.....36609
1094.....36609
1096.....36609
1097.....36609
1098.....36609
1099.....36609
1106.....36609
1108.....36609
1124.....34694
1126.....36609
1131.....36609
1135.....34694
1138.....36609
1209.....36610
1413.....34087

8 CFR

103.....34506
240.....34506

9 CFR

303.....34174
381.....34174
Proposed Rules:
318.....35505

10 CFR

50.....35455
Proposed Rules:
Ch. I.....34886
20.....36611
50.....34666

11 CFR

110.....36344
200.....34508
Proposed Rules:
110.....36023

12 CFR

201.....34064
226.....34676
229.....36593, 36599
584.....35456
1102.....35004, 36356
1617.....35728

Proposed Rules:
Ch. VII....34090
3....35507
203....36024
208....35507
225....35507
325....35507
741....34091

14 CFR

13....34511
21....34208-34213, 34511, 35981
23....35981
25....34208-34213, 34511, 34681
39....34065-34073, 34215-34220, 35982
71....34074, 35983, 36601
91....34614
95....36361
97....34221, 34512, 35984, 35986
121....34681
135....34681

Proposed Rules:
1....35888
21....34270, 36027, 36029, 36375
25....34270, 36375
27....36027
29....36029
39....36439, 36614
71....36616
61....35888
71....34271, 34530, 34531, 34809, 36031, 36378
91....35888
121....35888
125....35888
135....35888
141....35888
142....35888

15 CFR

903....35749

16 CFR

260....36363
1115....34222
1116....34230

Proposed Rules:
19....34532
23....34532
245....34532
453....34532
1116....34272
1700....34274

17 CFR

4....34853
30....36369
32....36369
200....36442
228....36442
229....36442
230....36442
239....36442
240....36442
249....36442
260....36442

Proposed Rules:
1....34533
200....35070, 35202
201....35070
202....35070, 35431, 35442
210....35070
228....36502
229....35070, 35202
230....35070, 35202, 36502
232....35070
239....34701, 35070, 35202, 36502
240....34701, 35070, 35202, 36502
249....35070, 35202, 36502
250....35431
259....35070
260....35070, 35442, 36502
269....35431
270....34701, 34726, 35202
274....34701, 35202

18 CFR

271....34682
284....36128

Proposed Rules:
2....35525
284....35525, 35766

19 CFR

4....35750
24....35458
207....34820

Proposed Rules:
101....34809, 35530
146....35530

20 CFR

10....35752
416....35459

21 CFR

14....35461
155....34244
169....34245
176....34865
178....35462
510....35968
520....35988
558....34515
1308....36371, 36372

Proposed Rules:
20....36617
341....34733-34735
1301....36439
1304....36439

23 CFR

1212....35989

Proposed Rules:
750....34168

24 CFR

4....34246
889....36338
890....36330

Proposed Rules:
92....34640
290....34834
886....34834

25 CFR

Proposed Rules:
515....34809
519....34349
522....34349
523....34349
524....34349
556....34349
558....34349
571....34809
577....34809

26 CFR

1....36001
5f....36001
301....36691
602....36001

Proposed Rules:
1....34092, 34736, 34740, 34886, 35536
5h....34736, 34740
301....36031

28 CFR

524....34662
571....34662

29 CFR

1910....35630
1926....35630
2619....36602
2676....36603

Proposed Rules:
1910....34192
1926....34656

30 CFR

70....34683
75....34683

Proposed Rules:
250....36032
718....35960
720....35960

31 CFR

312....34684
317....34684

Proposed Rules:
210....34650

32 CFR

191....35755
706....35463, 35464

33 CFR

100....34075
117....34868
135....36314
136....36314
137....36314
155....36222
157....36222
165....35465, 35466, 35755
222....35757

Proposed Rules:
165....34741, 36034
179....36034

34 CFR

8....34646
400....36720
401....36720
402....36720
403....36720
405....36720
406....36720
407....36720
408....36720
409....36720
410....36720
411....36720
412....36720
413....36720
414....36720
415....36720
416....36720
417....36720
418....36720
419....36720
421....36720
422....36720
423....36720
424....36720
425....36720
426....36720
427....36720
428....36720

Proposed Rules:
99....35964
280....36324
316....34620
318....34620
319....34620
366....36617
555....34488

36 CFR

Proposed Rules:
251....36618

37 CFR

Proposed Rules:
1....36034
10....36034

38 CFR

3....34517, 36439
21....35628

Proposed Rules:
3....34536

40 CFR

52....34249-34251, 35758, 35759, 36004, 36603
180....34517, 34518, 36004
185....36005
281....34519
721....34252

Proposed Rules:
50....35542
52....35769, 35771, 36040
122....35774
180....34537, 36042-36046
261....36866
268....35940
271....35940
300....34742
308....34742
721....34281-34283

41 CFR

101-45....34253

42 CFR

405....36006
406....36006
409....36006
410....36006
411....36006
412....36006
413....36006
418....36006
420....35760
489....36006
493....35760

Proposed Rules:
100....36878

43 CFR

3100....35968

Public Land Orders:
6932.....35627
6938.....34520
6939.....35467
6940.....35468
6941.....34685
Proposed Rules:
12.....34755

44 CFR

64.....34685, 34688
361.....34868

45 CFR

98.....34352
99.....34352
255.....34434
257.....34434
801.....36018
Proposed Rules:
1224.....35775

46 CFR

28.....34188
30.....36222
32.....36222
70.....36222
90.....36222
172.....36222
272.....34689
298.....34690
514.....36248
515.....36248
520.....35761
550.....34076, 35761, 36248
580.....34076, 35761, 36248
581.....36248

47 CFR

22.....34077
43.....34520
64.....34253
73.....34077, 34078, 34263, 34692, 34872, 35763, 36018–36021
76.....35468
80.....34261
90.....34692
95.....36372
Proposed Rules:
Ch. I.....35776
1.....36047
15.....36049
21.....34889
22.....34889
23.....34889
25.....34889
73.....34092, 34284, 34285, 36047, 36050, 36051
74.....36378
94.....34093
97.....34285

48 CFR

332.....35472
333.....35472
2509.....34881
2527.....34882
9900.....34167
9902.....34167
9903.....34078, 34167
9904.....34078, 34167
Proposed Rules:
1819.....34094
1852.....34094
5415.....36051
5452.....36051

49 CFR

1063.....35763
1109.....35628
Proposed Rules:
171.....36694
172.....34542, 36694
173.....36694
178.....36694
180.....36694
225.....34756
234.....36054
571.....34539
1002.....35557
1039.....34890
1141.....34891
1180.....34891, 35559

50 CFR

17.....35473
215.....34081
630.....34264
661.....34085, 34883, 34884, 35764, 36021, 36607, 36608
663.....34266, 35765
672.....34884, 35004, 35487, 35489, 35765
675.....35487, 35489
Proposed Rules:
17.....34095–34100, 34892, 36380
20.....35446
216.....34101
218.....34101
222.....34101
226.....36626
611.....35627
625.....34107, 36055
663.....34757
685.....35627

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

S. 2641/P.L. 102-334

To partially restore obligation authority authorized in the Intermodal Surface Transportation Efficiency Act of 1991. (Aug. 6, 1992; 106 Stat. 858; 1 page) Price: $1.00

H.R. 3836/P.L. 102-335

Pacific Yew Act. (Aug. 7, 1992; 106 Stat. 859; 5 pages) Price: $1.00

H.R. 5059/P.L. 102-336

To extend the boundaries of the grounds of the National Gallery of Art to include the National Sculpture Garden. (Aug. 7, 1992; 106 Stat. 864; 1 page) Price: $1.00

S. 2917/P.L. 102-337

To amend the National School Lunch Act to authorize the Secretary of Agriculture to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi, to establish and maintain a food service management institute, and for other purposes. (Aug. 7, 1992; 106 Stat. 865; 1 page) Price: $1.00

H.R. 4026/P.L. 102-338

Zuni River Watershed Act of 1992. (Aug. 11, 1992; 106 Stat. 866; 3 pages) Price: $1.00

H.R. 5343/P.L. 102-339

To provide additional time to negotiate settlement of a land dispute in South Carolina. (Aug. 11, 1992; 106 Stat. 869; 2 pages) Price: $1.00

S.J. Res. 270/P.L. 102-340

To designate August 15, 1992, as "82d Airborne Division 50th Anniversary Recognition Day". (Aug. 12, 1992; 106 Stat. 871; 2 pages) Price: $1.00

Last List August 7, 1992

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